Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 603

L. P. LARSON, JR., COMPANY, PETITIONER,

vs.

WM. WRIGLEY, JR., COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 4, 1927

CERTIORARI GRANTED DECEMBER 5, 1927

(33,055)

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1927.

No.

L. P. LARSON, JR. COMPANY,
Petitioner,

vs.

WM. WRIGLEY, JR. COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RECORD

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J51564

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IN THE

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FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1925.

No. 3727

L. P. LARSON, JR., COMPANY,

Appellant,

vs.

WM. WRIGLEY, JR., COMPANY,

Appellee.

No. 3728

WM. WRIGLEY, JR., COMPANY,

Appellant,

vs.

L. P. LARSON, JR., COMPANY,

Appellee.

MR. CHARLES H. ALDRICH,
Counsel for L. P. Larson, Jr., Co.

MR. ISAAC H. MAYER,
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Counsel for Wm. Wrigley, Jr., Co.

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(*Introduced by Wm. Wrigley Jr. Co.*)

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(*Introduced by Wm. Wrigley Jr., Company.*)

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(*Introduced by L. P. Larson Jr., Company.*)

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(3467) Monday, September 25, 1922.

4167-75 10:30 A. M.

CHARLES RUPERT WHITWORTH, was recalled for further cross-examination by Mr. Mayer.

(Mr. Mayer was unable to proceed with the examination of Mr. Whitworth because some of the working sheets of Touche, Niven & Company which had theretofore been identified were stated by Mr. Aldrich to have been sent to Toronto and had not yet arrived in Chicago, although they had been telephoned for.)

4176 Thursday, September 28, 1922.

10:30 A. M.

(The master stated that the papers which were supposed to come from Toronto had not yet arrived. Mr. Aldrich said that he had wired that they should be traced.)

4178 Whereupon the Wm. Wrigley Jr. Company introduced the following evidence to maintain the issues on its behalf:

JOSEPH M. KRAUS, called as a witness on behalf of the Wm. Wrigley Jr. Company, being first duly sworn, testified on direct examination by Mr. Mayer:

My name is Joseph M. Kraus. I live at 5322 Michigan Avenue, Chicago. I have lived in Chicago since June, 1913. I am 32 years old. I am advertising manager for A. Stein & Company, Chicago, manufacturers of Paris
(3468) Garters, Hickory Garters and other allied products.
4179 We are the largest in our line in the world. Our business is international.

I have been experienced in almost every branch of advertising for ten or eleven years. I have been connected with A. Stein & Company, Schulze Baking Company, the Independent Drug Company, the Partin Manufacturing Company, and I was in business for myself for a while.

In my experience as an advertiser, I have been con-

4180 nected with the planning, directing, placing through agencies or otherwise of all publicity matters pertaining to the business of the companies with whom I have been associated as advertising manager.

In my present connection, these advertisements have been published all over the world; with the Schulze Baking Company in various cities of the United States where we operated plants.

I have been connected with A. Stein & Company 5½ years. I was connected with the Schulze Baking Company about 2 years. The only work I have done with A. Stein & Company and the Schulze Baking Company has been in the advertising departments of those concerns.

I am the advertising manager for A. Stein & Company, and I was the advertising manager of the Schulze Baking
4181 Company. They bake bread and cake.
4182 Their plants are located in Chicago, Cincinnati, Kansas City and Peoria.

Where a manufacturer manufactures and sells more than one product and advertises one product, the advertising expense should be charged to the particular product advertised always. As to how the expense of an advertisement should be distributed or charged for a
(3469) manufacturer of three or more products that adver-
4183 tises only two of those products in one advertisement I will say I would have to see the advertisement to answer that question. It depends upon the amount of space in the advertisement in qusetion that is used to advertise both products. If both products should occupy equal space, I would say that 50% of the advertising would be charged to one product and 50% to the other; on the other hand, if the space varied at all, the difference would have to be made up in that manner as the space used to advertise one product bore in its relation to the other product to the entire space used or to the entire space involved. That is, I would distribute the entire advertisement among the articles mentioned in the advertisement, and the proportions in which I would distribute it would be according to the space occupied by each of the two products. I would not charge any part of such an advertisement to good will, or distribute the cost of such an advertisement among any products not named in the
4184 advertisement. I would charge the expense of such ad-

vertisements on my books as a sales expense, the same as I would the expense of a salesman.

A. Stein & Company advertise their Paris Garters all the time. The purpose of advertising all the time is the same purpose that you have in working all the time. You cannot expect to stay in business and quit working. That is one of the most potent factors, that we have over there, keeping our fields running.

4185 (Mr. Mayer then asked the witness what in his opinion is the length of time he would get a benefit from advertising so as to justify discontinuing advertising and yet maintaining sales. Mr. Aldrich objected to the question (3470) as being immaterial and dependent upon the nature both of the advertising and the business. The master overruled the objection, stating that he thought the evidence was competent in view of what was introduced on behalf of the Larson Company.)

The witness continued:

I think that any man that would attempt to answer that question and feign ability to answer it accurately would not know his business, but I can say this: That if 4186 we were to stop advertising today, we all know that our sales would slump as a result. Just when that slump would come in is problematic. Personally I feel that the loss in sales would depend somewhat upon competition might come in and do after we quit, and many other factors that would enter into the situation that makes the question rather broad and hypothetical.

(It was understood that Mr. Aldrich's objection went to this whole line of testimony.)

It would be suicidal for me to stop my advertising for a period of a year. I would never recommend the advisability of stopping our advertising for six months.

I have brought with me samples of A. Stein & Company's advertisements. The cardboard I now produce is a street car card know nas our No. C 113, used to advertise Paris Garters in the New York subway—the tube—its the Hudson tube—a street car card, that's what it is called in advertising parlance.

4187 We used these cards in New England, but not this size, about half this size, the same dimensions pulled down. (3471) The half size I am referring to was proportioned exactly the same as the other.

A. Stein & Company charged the cost of that advertise-

ment entirely to the product called Paris Garters. At the time of these advertisements, they did not manufacture and sell under the name "Paris" any other articles
4188 besides garters. In other words, at the time this card ran Paris Garters were the only product made under the Paris name. Since that time, A. Stein & Company manufacture and sell arm bands under the name "Paris". A. Stein & Company advertise Paris Arm Bands, not to the consumer but to the trade. They charge those advertisements of Paris arm bands to Paris arm bands. At the present time we sell both garters and arm bands under the name of "Paris". We now do advertising that
4189 refers to Paris Garters alone, and also advertising that refers to Paris arm bands alone. We aim to have the name "A. Stein & Company" upon all of our advertisements. Occasionally we may leave it off.

Since I have been handling Paris Garters and Paris arm bands, we charge our advertisements of Paris Garters to Paris Garters alone, and we charge our advertising of Paris arm bands to Paris arm bands. If we were now using in street cars a card of the kind I have already referred to and which is now before me, I would charge the cost of it to Paris Garter advertising alone.

4190 (Mr. Mayer offered in evidence the said advertisement of A. Stein & Company of Pairs Garters numbered C. 113", but Mr. Aldrich objected and the master sustained said objection. The said advertisement so offered was not received in evidence, but was marked "Wrigley Exhibit 1—offered—not admitted.")

(3472 Wrigley Exhibit 1 Offered Not Admitted.

4191-4192 (Mr. Mayer then asked the witness how in his opinion the advertisement represented by said Wrigley Exhibit 1 should be charged, assuming at that time the A. Stein & Company were manufacturing and selling both Paris Garters and Paris arm bands. Mr. Aldrich objected and the objection was sustained.

(Mr. Mayer then offered to prove by the witness that in his opinion the entire cost of the advertisement should be charged to Paris Garters and that no part of it should be charged to either good will or to Paris arm bands.)

Our purpose in charging the entire cost of an advertisement of one product to that product and charging no part of it to the non-advertised product was in order that we should have a definite basis upon which to figure the

cost actually of doing business on Paris Garters, selling expense.

Besides the other methods of advertising used by me while I have had charge of A. Stein & Company and the Schulze Baking Company advertising, we use any form
4193 of publicity that is available, newspapers, magazines, trade papers, street cars, posters, painted bulletins, electric displays, novelties, direct by mail.

The card I now have before me is another street car
(3473) card known as our No. 144-A, used for the same purpose as the card we had here before.

(Mr. Mayer asked the witness what in his opinion was the proper method of charging the expense of that advertisement. Mr. Aldrich objected on the ground of immateriality and irrelevancy. The objection was sustained. Mr. Mayer then offered to prove by the witness that in his opinion the entire expense of that advertisement should be charged to Paris Garters and to no other product and that it should be charged as a selling expense and no part of it to any good will. Mr. Aldrich objected and the objection was sustained.

4194 Mr. Mayer then offered in evidence the street car advertisement last referred to by the witness containing the mark at the bottom right hand corner "144-A". Mr. Aldrich objected, and the objection was sustained.

The said advertisement so offered but not received in evidence was marked "Wrigley Exhibit 2, offered, not admitted.")

4195 Wrigley Exhibit 2—Offered—Not Admitted.

(3474) I now have before me four street car cards, No.
4196 136A, 140A, B114, 143A. They are exact duplicates of cards that were actually put up in street cars by A. Stein & Company. The same thing is true of an additional card which is now shown me marked 138A.

Those last five cards represent actual advertisements in street cars in New York and eastern territory put out by A. Stein & Company. The two cars marked 136A and 140A respectively advertise Paris Garters.

4197 (Mr. Mayer then asked the witness how in his opinion should the expense of the advertisements 136A and 140A be charged in order to ascertain the profits earned on Paris Garters. Mr. Aldrich objected. The objection was sustained.

Mr. Mayer then offered to prove by the witness that in

his opinion the proper way of charging the expense on those advertisements is to charge it entirely to Paris Garters as selling expense or as advertising expense the same as any other selling expense pertaining to that particular product and to charge no part of it to good will in arriving at profits.

Mr. Aldrich objected. The objection was sustained.

Mr. Mayer offered in evidence the two cards containing the marks "136A" and "140A" advertising Paris Garters. Mr. Aldrich objected. The objection was sustained.)

(The said two cards so offered in evidence, but not received in evidence, were marked respectively Wrigley Exhibits #3 and 4, offered, not admitted.)

(3475)
4198 Wrigley Exhibit 3—Offered—Not Admitted.
4199 Wrigley Exhibit 4—Offered—Not Admitted.
(3476) (Mr. Mayer offered in evidence the street car adver-
4200 tisements identified by the witness and marked B114 and 138A and 143A. Mr. Aldrich objected. The objection was sustained.

Said cards were marked respectively Wrigley Exhibits 5, 6 and 7, offered, not admitted.)

4201 Wrigley Exhibit 5—Offered—Not Admitted.
(3477)
4202 Wrigley Exhibit 6—Offered—Not Admitted.
4203 Wrigley Exhibit 7—Offered—Not Admitted.
(3478) (Mr. Mayer then asked the witness how in his opin-
4204 ion the expense of the advertisements, Wrigley Exhibits 5, 6 and 7, should be allocated. Mr. Aldrich objected. The objection was sustained.)

The three Exhibits last described are exact copies of cards actually put up in street cars.

(Mr. Mayer then offered to prove by the witness that in his opinion the proper method of distributing the cost of those last three advertisements is to charge the same to Hickory Garters and to charge no part to any other product and to charge no part to good will, but to charge the entire cost off as a selling expense pertaining to Hickory garters in arriving at profits made from Hickory garters. Mr. Aldrich objected. The objection was sustained.)

(Mr. Mayer then asked the witnes as a matter of fact how he charged off the expense of advertisements shown

4205 by Wrigley Exhibits 3, 4, 5, 6 and 7. Mr. Aldrich objected. The objection was sustained.

Mr. Mayer then offered to prove by the witness that A. Stein & Company did in fact charge off the expense of the five advertisements last referred to as a charge against the respective articles mentioned therein and no (3479) others, and that no part of any of those advertisements was charged to good will or to any product not specifically named in the advertisements.

The master sustained an objection to the offer.)

I have personal knowledge as to the way in which A. 4206 Stein & Company charged off their advertising. While A. Stein & Company were charging Hickory garters, they were dealing in other products called "Hickory", such as Hickory waists for children, Hickory elastic, Hickory shirt ribbons, Hickory girdles for women, Hickory sanitary specialties, Hickory sock garters.

(Mr. Mayer then stated that he desired to renew the offer to prove what his opinion is as to the proper method of charging of those Hickory advertisements and how they in fact did. Mr. Aldrich objected. The master stated he would make the same ruling if it is the same class of advertising. Mr. Mayer stated that it was, except the record now shows they did have more than one Hickory article at the time they put on this particular Hickory advertisement.)

4207 I have brought some of the advertisements of the Schulze Baking Company used by them while I was managing its advertising department. The Schulze Baking Company manufactured and sold Schulze Butternut bread, Big Dandy Bread, Prince Henry Rye Bread,—several products, I don't remember them all, half a dozen different brands.

The sheet I now have before me is a one sheet poster advertising Butternut Bread. It is an exact copy of one (3480) of the actual posters used by the Schulze Company while I was with them.

(Mr. Mayer then asked the witness how the expense of that advertising was charged by the Schulze Company. 4208 Mr. Aldrich objected. The objection was sustained.

Mr. Mayer then offered to prove by the witness that the entire expense of that advertisement was charged to Butternut Bread for the purpose of ascertaining the profits of Butternut Bread, that no part of the expense of

that advertisement was charged to any other kind of bread, or to any other product, and that no part of the expense was charged to good will.

Mr. Aldrich objected. The objection was sustained.)

(Mr. Mayer then asked the witness what in his opinion is the proper method of charging the expense of that particular advertisement in order to arrive at the actual profits of Butternut Bread. Mr. Aldrich objected. The objection was sustained.

Mr. Mayer then offered to prove by the witness that in his opinion the proper method of charging that expense in order to ascertain the profits of Butternut Bread is by charging the whole expense of that advertisement to But-
4209 ternut Bread as a selling or as an advertising expense and charging no part to any other product, or to goodwill.
(3481) Mr. Aldrich objected to the offer. The objection was sustained.

Mr. Mayer then offered the poster in evidence as advertising Butternut Bread. Mr. Aldrich objected. The objection was sustained.

Said poster was marked Wrigley Exhibit 8, offered, not admitted.

4210 Wrigley Exhibit 8—Offered—Not Admitted.

(3482) (At the request of Mr. Mayer, Mr. Aldrich then stip-
4211 ulated that photographic reproductions might be made of these various advertisements that had been already referred to by the witness and such as might be referred to by the witness, and that such reproductions might be substituted in the record in lieu of the originals without waiving Mr. Aldrich's objections, but reserving the objections made so that they will be equally applicable to the photograph.)

There is pasted on the back of Wrigley Exhibit 8 a piece of cardboard, or cut-out. It is not a part of Exhibit 8. It just happened to have been placed there.

That pasteboard pasted on the back of Wrigley Exhibit 8 is a cut-out advertising Schulze's Luxury Cake
4212 that was used as a hanger in grocery stores and other stores where we sold the cake, simply a little display device. "Cut-out" is just a trade name.

(Mr. Mayer offered in evidence the said cut-out pasted on the back of Wrigley Exhibit 8. Mr. Aldrich objected. The objection was sustained.

(Said cut-out so offered but not received in evidence was marked Wrigley Exhibit 8-A, offered, not admitted.)

4213 Wrigley Exhibit 8A—Offered—Not Admitted.

(3483) At the time that Schulze was using the cut-out now 4214 marked Wrigley Exhibit 8, the only cake they were manufacturing was Luxury Cake.

(Mr. Mayer then asked the witness what in his opinion was the proper way to charge the expense of the cut-out, Wrigley Exhibit 8-A, if he wanted to find the actual profits made from dealing in Luxury Cake. Mr. Aldrich objected. The objection was sustained.

(Mr. Mayer then offered to prove by the witness that in his opinion the proper way of charging that expense for the purpose indicated in the question is to charge it all to Luxury Cake and to charge no part of that expense to bread or to any other product than Luxury Cake and to charge no part of this expense to good will. Mr. Aldrich objected to the offer. The objection was sustained.

(Mr. Mayer then asked the witness if he knew as a matter of fact how the Schulze Company charged the expense of that cut-out. Mr. Aldrich objected. The objection was 4215 sustained.

(Mr. Mayer then offered to prove by the witness that the witness knew. Mr. Aldrich objected. The objection was sustained.

(Mr. Mayer then asked the witness how the Schulze Company did in fact charge the expense of that cut-out. Mr. Aldrich objected. The objection was sustained. Mr. Mayer then offered to prove by the witness that the (3484) Schulze Company in fact charged the entire expense to Luxury Cake and that the purpose of doing that was to keep a correct record of the actual cost of Luxury Cake. Mr. Aldrich objected. The objection was sustained.)

I have now before me a cardboard advertising Schulze Butternut Bread. It is not an original of the advertisement. It is one of the many that we put out of the same kind. It is an exact duplicate of what we actually used, one of thousands that we used.

4216 (Mr. Mayer then stated to the master that he proposed to put a series of questions to this witness for the purpose of proving by him that these advertising cards last referred to were all charged to Butternut Bread and that no part was charged to any other kind of bread or to any other product and that no part was charged to good will, but that the whole cost was charged off as an expense of doing business.

(Mr. Aldrich objected, and the Master sustained the objection.

(Mr. Mayer then asked the master whether he understood that the master would not permit any of these advertising cards to be received in evidence or to permit the witness to give any of the testimony indicated in Mr. Mayer's statement. The master said that that was his ruling.

(Mr. Aldrich suggested that all such articles offered might be identified.

(3485) (The document last identified by the witness, being
4217 advertisement of Schulze Butternut Bread No. 24500, so offered, but not received in evidence, was marked Wrigley Exhibit 9, offered, not admitted.

4218 Wrigley Exhibit 9—Offered—Not Admitted.

(3486) There are pasted on the back of Wrigley Exhibit 9 a
4219 piece of cardboard advertising Schulze's Butternut Bread, and also advertising Schulze's Luxury Cake. That is a street car card used by the Schulze Company in due course of business.

(Mr. Mayer then asked the witness what, in his opinion, was the proper way to distribute or allocate the charge of that advertisement if he was seeking to ascertain correctly the profits of the different articles dealt in by the concern. Mr. Aldrich objected. The objection was sustained.

Mr. Mayer made the same offer of proof with respect to this question that he made in connection with the other similar questions put to the witness. The master sustained an objection.

Mr. Mayer then offered the said street car card pasted on the back of Wrigley Exhibit 9, in evidence. On the objection of Mr. Aldrich it was not received. The said street car card was marked Wrigley Exhibit 9-A.)

4221 (Wrigley Exhibit 9-A)

(3487) (Mr. Mayer then drew the witness' attention to Larson Exhibit 17 and asked him to examine it and state in his opinion how the expense of that advertisement should be charged in order to get the profits made by the advertiser on the different products he may be manufacturing. Mr. Aldrich objected. The objection was sustained.

Mr. Mayer then asked the witness how the cost of the advertisement illustrated on Larson Exhibit 37 should be

charged, supposing that the Wm. Wrigley Jr. Company manufactures and sells different kinds of gum such as Wrigley's Spearmint gum, Wrigley's Doublemint gum, Wrigley's Juicy Gum, Sweet Sixteen and other brands, and supposing a court said that Mr. Larson was entitled to all of the profits made by the Wrigley Company in the sale of the Doublemint brand during a certain period, and supposing he was seeking to find out exactly what profits had been earned by the Wrigley Company through the manufacture and sale of the Doublemint brand during a given period in order to turn over the profits of Doublemint to a third party.

Mr. Aldrich objected to the question as incompetent, immaterial and not containing all the elements of the case. The objection was sustained.

(3488) Thursday, September 28, 1922. 3:00 P. M.

4224 (It was agreed that Mr. Mayer might withdraw the original Schulze and Stein Exhibits used in connection with the examination of the witness Kraus and substitute photographs for them, the originals to be available at any time to anybody.)

JOSEPH M. KRAUS resumed the stand for further direct examination by Mr. Mayer:

I have examined the seven books of advertising marked Larson Exhibits 30 to 36, both inclusive, containing ad-
4225 vertisements of the Wm. Wrigley Jr. Company, so that I am familiar with the general appearance and scope and type and contents of the advertisements. I have also examined copies appearing in the record before the master of some of those advertisements.

(Mr. Mayer asked the witness what, in his opinion, was the character of the advertising appearing in the seven books as to whether or not any part of it should be charged to anything other than the products named in the advertisement, in a case where some other person is entitled to the profits accruing from business done in one or more of the advertised products.

Mr. Aldrich objected. The objection was overruled.)

4226 I consider that the advertising that I have seen in the

records referred to and in the exhibits referred to are specific advertisements on specific or various products
(3489) manufactured by the Wrigley Company and are chargeable as a sales expense directly to the products advertised. In my opinion no part of the expense of those advertisements should be charged up as an asset to good will. I am speaking now of a case where the intention is to find out exactly what profits have actually been made on the advertised products and where such profits would belong to some outside person.

I found some of the advertising that I examined and referred to, advertised more than one product.

Looking at Larson Exhibit 46 my opinion is that if we allocate this advertising on the basis of the actual space
4227 utilized in the advertisement for advertising both products, such as taking the actual space and number of lines, which is advertising verbiage, making the amount of space which represents the cost, of the actual space occupied by this Spearmint package, and add to that space the actual space occupied by this package, also Spearmint, in the girl's hands, add those two spaces together, and then taking this space occupied by the Wrigley's Doublemint package, I believe that the proper way and
4228 the way that we have always done it, to allocate this expense, would be to divide the entire cost of the advertisement in the same ratio as the Spearmint space bears to the Doublemint space, and charge it to sales expense.

I would make the products bear the charge in the same ratio that this space, that is, the space here, Wrigley's Spearmint package, plus this other Wrigley's Spearmint package in the girl's hand, bore to this Doublemint package, the cost of this entire advertisement should be split up between the Spearmint advertising and the Doublemint advertising in the same ratio. I meant to say that it should be split up among Spearmint and Doublemint
(3490) because I was speaking about the expense of both the Spearmint and Doublemint advertising. I charge no part of that advertisement to anything except to the two products mentioned in the advertisement. That's all the advertisement is trying to sell, one of the two products.
4229 In the advertisement Larson Exhibit 46 the word "Wrigley's" appears in conspicuous type and in type larger than any other language in the advertisement. In my opinion the entire cost of that advertisement, Lar-

son Exhibit 46, should be charged to Spearmint and Doublemint and to no other products because that is all that is being advertised, Spearmint gum and Doublemint gum.

As to whether in my opinion Wrigley's entire business receives any benefit from that advertisement, I will say the only accurate method that I ever encountered of gauging the results of any effort are by the results themselves. The only accurate method to determine the value of these advertisements is to determine it on the basis of the product or products they are attempting to sell, and there are only two products on there that I see advertised, that is, Wrigley's Spearmint Gum and Wrigley's Doublemint gum, and that's the only way you can rightfully allocate or distribute that advertising expense.

Looking at page 917 of the accounting record, which is a photographic copy of a billboard advertisement, it is
4330 my opinion that the expense of this advertisement, where you are trying to find out what the profits are of Wrigley's Doublemint so as to pay them over to some stranger, should be charged in its entirety to Doublemint selling or advertising expense, because regardless of whether it was a billboard or anything else, it is 100%
(3491) Doublemint advertisement.

The fact that on the botton line of that advertisement there is a statement which reads "Made by the makers of the famous Wrigley's Spearmint" does not change the propriety of charging the cost of the space occupied by that sentence to Doublemint. There should be no charge made against Spearmint by reason of the reference to it, for the simple reason that the statement referred to is about the strongest argument that appears on there as to why they should buy this particular article, Doublemint.

In my opinion I feel that if any other theory was practiced it might be certainly more in order to charge the Doublemint advertising with the reputation of Wrigley's
4231 Spearmint because it is used here as an additional foundation. In other words, if you come to me today and say "I would like to handle this litigation because I have worked all through this famous lawsuit", it is the knowledge of what you have done before that sells me on your handling the case today. If you only charged 100% for Doublemint, you are certainly doing the right thing here.

"It is made by the makers of the famous Wrigley's Spearmint" is the same prposition as "made by the makers of Schulze's Butternut Bread" or "Made by the makers of Paris Garters". It is simply an additional reason as to why the consumer should buy the advertised article.

(Mr. Lane stated on the record that in the actual account filed the Wrigley Company did not go as far as that, that it took off all the said bottom line space and charged it to Spearmint.

(3492) Mr. Mayer then stated to the witness that when he asked him his opinion as to the allocation of the Wrigley advertising, the witness should always assume that Mr. Mayer was calling for his opinion in a case where there is a controversy as to how much profits have been earned from the sale of Wrigley's Doublemint gum and where it has been decided by a court that a stranger to the Wrigley Company was entitled to those profits on the ground that the Wrigley Company had infringed the package of this stranger in using Wrigley's Doublemint. The witness stated he would bear that in mind in the answers he gave.)

4232 I am of the opinion that the cost of the advertisement, Larson Exhibit 38, should be charged in its entirety to Doublemint.

With respect to the second and third lines from the bottom, which read "Made by Wm. Wrigley Jr. Company, manufacturers of the famous Wrigley's Spearmint sold everywhere", my position would be the same as in the previous case to which I testified.

Looking at Larson Exhibit 41, which is in French, I will say I do not read French. Assuming that there is nothing in the advertisement that does not refer to either Spearmint or Doublemint, and that the general language

4233 above the two packages of Spearmint and Doublemint in that exhibit has reference to them and not to any third product, I would say that 50% of the expense should be charged to Wrigley's Spearmint and 50% to Wrigley's Doublemint. I say that upon the supposition that the Wrigley's Doublemint package and reference is equal to

(3493) the space occupied by the Wrigley's Spearmint package and references.

My opinion as to the proper method of allocating advertisements of the type that I have referred to and that

I have examined would not be changed by the fact that in some of them the name "Wrigley's" appears in the most conspicuous type of any part of the advertisement, because, as stated before, what we are selling is Spearmint gum or Doublemint gum or some other product; we are not selling Wrigley's. You don't know anything about what the advertisement refers to until you get down to the gum proposition. This may be Wrigley's rubber heels or Wrigley's shoes, hats, suits or anything else.

4234 In my opinion Larson Exhibit 44 should be charged 50% to Spearmint and 50% to Doublemint for the reasons I have already assigned. That method is the only method to adopt, and it is the method we have always pursued. I don't see how anybody can follow any other method and know what the profits are, and what it would cost to advertise.

Referring to Larson Exhibit 48, where the word "Wrigley's" is several times as large as any other

4235 language, in allocating that advertisement. I would take the space occupied by the Spearmint package in the man's hand at the top and the space occupied by the Doublemint package in the lower left hand corner and the space occupied by the Juicy Fruit package, also in the lower left hand corner, and divide the expense of the entire advertisement in the same ratio under Spearmint advertising, Doublemint advertising and Juicy Fruit advertising as the space occupied by the Spearmint, Doublemint and Juicy Fruit packages relate to each other, in direct proportion, in direction ratio rather.

(3494) Larson Exhibit 49, I would charge 50% to Spearmint and 50% to Doublemint. If that advertisement cost, say, $10,000 I would charge $5,000 to Wrigley's Spearmint and $5,000 to Wrigley's Doublemint. It is the same proposition, as if the Wrigley Company went and rented a store on State Street for $10,000 a year and devoted half of that store to the sale of Spearmint, and half of the store to the sale of Doublemint, the rental charged

4236 against each product would be divided according to the amount of space occupied on the same basis that every department of a business figures its rental; it is the same proposition as selling expense.

In my opinion the expense of Larson Exhibit 50 should be charged thirty-three and one-third per cent to Spearmint and thirty-three and one-third per cent to Juicy

Fruit and thirty-three and one-third per cent to Doublemint, assuming my eyes don't deceive me, and that there is about one-third, that is, that equal space is used for each illustration. Now, for all intents and purposes—the way we do in our records, it really is not necessary to take a rule and measure, because it looks enough alike to all intents and purposes I say to be divided that way, one-third to each. If you want to be absolutely accurate in your account, why the only way to do would be to actually measure it, but sometimes there is more work involved in connection with keeping all those details than the records are worth, or the difference at the end of the
4237 year in an advertising account would make necessary or seem essential.

The theory which I have stated here with respect to some of these specific advertisements applies to all that I saw in those books of Exhibits.

(3495) (Mr. Mayer then asked the witness' opinion as to whether the expense of the advertisements in the books of Exhibits should be charged on the basis of the sales that is, charge the advertised product appearing in the advertisement with that portion of the advertisement which the sales of the advertised product bore to all the sales of the business.

Mr. Aldrich objected on the ground that it was not a question for opinion evidence, but a question of law for the court, under the authorities and under the terms of the decree. The objection was overruled.)

The sales method was absolutely the wrong method because it would be absolutely impossible for any manufacturer in business advertising various products to know whether he was getting away with a profit or a loss on any item. In other words, you realize well enough in
4238 those instances where you have to come in contact with businesses that go to the wall there are usually some leaks that are not discovered until it is too late, and it is just an instance of that kind where advertisers and business men try to fool themselves in attempting to allocate an advertising expense against an entire business rather than as against a specific thing. For instance, if we get out a Paris suspender, and it never should have been made, and we spend half a million dollars a year in advertising it, and we allocate that expense, or the expense of that suspender advertising, in the ratio that the

sales of the suspender bear to the rest of our business,
(3496) we would be fooling ourselves, and the money we would be saving on garters and other products would be paid for that advertising. The only method to determine accurately the profits accruing from any advertising or the cost of the advertising as a selling expense is on the basis of the specific article advertised.

In my opinion, if you are trying to find out what the result of a business is, the advertising should not be capitalized.

4239 *Cross-Examination by Mr. Aldrich.*

I examined this advertising and the records in this case with the illustrations of advertising contained therein, at the Wrigley Company's office in the Wrigley Building yesterday. Both Mr. Lane and Mr. Mayer were present.

Mr. Stanley told me that this was a question of accounting to the Larson Company for the profits of Doublemint during a certain period for an infringed dress. The attorneys did not tell me that. I do not think it was told to me in their presence. I knew the fact. As to whether there was an effort to keep me in ignorance as to the facts and circumstances of this case which would enable me to know under what circumstances this in-
4240 quiry was made, I will say the questions that were asked of me yesterday by Mr. Mayer and Mr. Lane were simply on the basis of my advertising experience. They did not tell me anything about the relation that my opinion might bear to any case that they had in hand. It was after they left that Mr. Stanley told me just what they were trying to accomplish, so that I knew about the case and knew that the Larson Company had been decreed to have any profits that accrued to the Wrigley Company through the
(3497) manufacture and sale of Doublemint during a certain period in the infringing dress.

I have have in charge of advertising and the method of keeping the records, as I explained. I have not looked at
4241 it all the time as a means of determining whether one branch of the business was profitable or unprofitable as compared with the other branches of the business. The methods employed were simply to determine the profitableness of advertising any specific brand that we had under discussion. It had not any bearing to other brands

we might be making and made money on that we were not advertising.

My house kept the cost though both with reference to advertising as well as with reference to labor and materials of each product that we were manufacturing. That was our aim and object.

As to whether, in our business, leaving out the mere question of dollars and cents, for the purpose of estimating which kind or department of our business was profitable, we recognized that we build up through a long course of advertising and of successful conduct of our
4242 business what is known as good will, I will say that's an indefinable something that we do not concretely represent in our figures, I believe.

As to what I understand by the meaning of the term "good will", I will say as far as the question of good will is concerned as applicable to the results obtained by any advertising or any advertising expense, and that's the proposition that I can speak about with some degree of confidence and authority, I have never attempted, nor has any company that I have been with attempted to charge any of the advertising expense up to good will. I under-
(3498) stand that many successful companies do not carry a
4246 good will account.

Stein & Company, with who I am connected, do not carry a good will account. I understand that good will consists of the reputation for honest dealing, good merchandise, fair methods and all other attributes in the business that go towards making possible the successful pursuance of it with relation to those people, whether dealers or consumers, with whom an institution is engaging in business or doing business with. I understand or know something about how that good will is created.

As I said before, I believe first a manufacturer lays a foundation for good will in his business by making a product that is right, from the standpoint of quality, distributing that product in a proper manner or in a fair manner with reference to the profits accruing to his distributors or dealers and ultimately getting the product into the hands of the consumer so that in the last analysis it gives that consumer the utmost for his money.

4247 I don't know just how manufacturers that do list good will as an asset arrive at their conclusions with reference to their expression of good will. Whether it is expressed

in the tangible assets or something that exists over and above the tangible assets.

I know that there is a very frequently occasion for ascertaining the status of the good will of a business. I don't know how they go about to do it. I do not know whether there are any rules by which the good will of a firm or of a corporation can be ascertained.

(3499) I understand that if a person dies possession shares
4248 in a corporation, the value of the good will must be arrived at for the purpose of fixing the transfer tax, but the method of arriving at it is something I do not understand. I do not know anything about it. I have never had occasion in connection with any business with which I have been employed, to consider that question. I have never had, as an advertising man, or as an accountant, any occasion to consider how the good will should be ascertained. That is, because my training
4249 has been along the lines, and my experience has been along the lines that the only thing that we can tangibly figure that advertising does is the tangible sales. I feel, and there are many men that share my views, and the institutions with which I have been connected have shared that view, that this good will business is a lot of bunk. It will influence your statement but it is not an actuality. You cannot put your finger on it. We might have a certain good will which we might place on our business today, and yet if certain people got out of that business or died, that good will would not be worth what somebody else might think it is worth today, and the best way is not to fool yourself, but to count it as a dollar and treat it as that. That would be the reason for my not keeping a good will account, but whether that's the reason for my company not keeping it or not is another proposition.

I had one experience where, on the dissolution of a partnership, or on the death of a partner who owned shares of stock in a corporation there were court pro-
4250 ceedings for the purpose of ascertaining the value of the interest of the deceased partner or of the corporate
(3500) assets and in which there were investigations and a judicial fixing of the value of good will.

I do not know what rule has been adopted by the courts, and I had no occasion to investigate or ascertain them.

I understand that in every successful manufacturing

company or partnership business, there is a value that is above the capital employed in the business and a surplus expressed in dollars and cents. I should imagine that would be true with A. Stein & Company.

4251 As to whether I know of any case where a business has been continued for a considerable length of time, has been constantly increasing in the volume of its sales, in dividends declared and the accumulation of surplus, in which there is not any value, which may be designated as good will not expressed in the tangible assets or surplus, I will say it seems to me that I do recall in looking over the statements of some companies that their good will was placed at a dollar. Just which companies those were, I don't know, but I think I could find out. I don't know what the reason is that such good will would be placed at a dollar.

I recall looking up the condition of a company and finding that there was not a large good will account or no account at all.

I would not say that the Wrigley Company has not any good will. I think that extensive advertising has

4252 contributed to the value of that good will. I would say that the advertising shown by this record to have been expended by the Wrigley Company for advertising has created good will.

I do not know what is meant by institutional advertising. I have heard all about institutional advertising, and read about all that was ever said about it; heard

(3501) most of the things that were said about it. I do not know what is meant by the term "institutional advertising." It strikes me very much like Einstein's theory of relativity. I have not quite got it yet. It may be

4253 there but I don't see it yet. I agree that there is a certain kind of advertising that people do that is called institutional advertising, but I do not understand what they mean by institutional advertising.

As to whether I can give some samples of what I regard as institutional advertising, I will say if we go through the files of various advertisers,—I don't remember them particularly now,—during the war period when in order to have the Government pay some of their advertising bills they submitted to almost any kind of advertising matter that might be presented and, as I say, have the Government pay the most of it, there was a lot of stuff named institutional advertising that ap-

peared, but just definitely what any one means by institutional advertising is something that I do not understand as a practical advertising man. To my mind if I do not understand it, it does not exist. When I have
4254 spoken about the Government paying these advertising bills, I refer to the fact that during this war period the Government allowed as an expense the amount paid for advertising, and therefore, people, instead of keeping their money in the profits, indulged in very liberal advertising. They did that because they thought that that advertising had a residual value, and that they would get something out of it afterwards; but it did not. Money spent along those lines is just about as productive as throwing it out of the window. That's my opinion, based on the practice that I have seen indulged in in that stuff.

(3502) As to what is institutional advertising, I don't
4254 know. The stuff was called institutional advertising.
4255 For instance, there might be concerns that are running a regular series of advertisements right along that I would consider largely sales building and sales getting advertisements—institutional—for no other purpose than selling merchandise, the same as sending a salesman out on the road, you might as well talk about a salesman going out and doing institutional work. I don't just know what people mean by that. I understand there is advertising that is called institutional advertising, but I could never see just what was meant by institutional advertising.

(3503) I will say with regard to so-called institutional advertisements—I would not call the Heinz advertising of 57 varieties institutional advertising. I would not call the Studebaker advertising institutional advertising. I believe they are advertising automobiles, selling automobiles, and that's what they are advertising. It all ought to be charged to automobile advertising even as
4256 against a person who has suffered a wrong through them by the decree of the court.

The fact that Studebaker had previously been the name of the corporation in its advertising, and that to transfer its business from a wagon and buggy manufacturing company to an automobile company, assisted it in so far as the same purposes and same qualities that marked their efforts as wagon manufacturers were extended into their new business of automobile making.

The Studebaker advertising and all their good name didn't do them a lot of good when they were putting out a lot of bum cars. It is only results that come to the front. Several years ago, in putting out a lot of machines, I don't think they showed a profit although they had the Studebaker name. I would not call the Studebaker advertising institutional. If I should see their ad in the paper today advertising their cars at a new price, the only thing that advertisement does, it either sells me that automobile, or it does not; I am either interested in that car at that price, or I am not.

I referred to a line that is at the bottom of one of the
4257 advertisements that I was interrogated about by Mr. Mayer. I didn't say that the reference to Spearmint there was only just putting Wrigley's reputation back
(3504) of Doublemint. I said that the statement at the bottom of that poster that I was shown that Wrigley's Doublemint, the statement, I think, at the bottom of the poster was "Made by the makers of the famous Wrigley's Spearmint gum", and I believe I stated in that connection that that statement was merely an additional sales argument as to why people should buy the Doublemint gum, that is, assuming that the people that chewed the Spearmint gum had learned to like it, and naturally it might follow if a manufacturer made one product that was good, he might be making another that was good, and they might try it. That would help Doublemint sales.

I have had no experience as an accountant. I never had any occasion or been consulted by the Government or in any cases which involved the question of ascertaining good will. I think I have known there were such
4258 cases. I have never known how it was done. My view of the matter is confined to the necessity of every manufacturer or dealer keeping an accurate account of the cost and yield of each article which he is offering for sale or manufacturer with the view of knowing whether or not it is profitable, and if profitable, to what extent.

I have never kept books for anybody. I am not a bookkeeper. I have supervised bookkeeping. I understand the principles of accounting, but I mean I have never actually been an accountant or a bookkeeper.

As to what effect, if any, upon my views has been made by Mr. Mayer's statement and by the court's
4259 statement that this inquiry is being had for the purpose

of ascertaining the profits which shall be yielded to Mr. Larson under the decree of court, I will say every ques-
(3505) tion I have answered has been with that thought in mind; but I have simply answered these questions in the disinterested manner that any man might answer them that was trying to help, if I may say I am helping you, to ascertain a method of calculating the cost of this article. I would apply, being mindful that this is an inquiry for the purpose of ascertaining what sum, if any, shall be paid to the Larson Company, the same rules as to cost and yield of the infringing article that would apply in keeping the accounts on my own books.

Redirect Examination by Mr. Mayer.

If I saw an advertisement which said merely "Heinz's 57 varieties" I would simply call that direct informant
4260 of publicity, reminding me of those parts of Heinz that I was acquainted with, in other words, it would resell on the Heinz products that I knew about. I don't know the whole 57 Heinz products. That particular ad would remind me of the various products that I do know about.

As to whether I understand that Mr. Aldrich, while asking me about institutional advertising, was asking me as to whether I thought it was profitable or not, I will say I understand from the series of questions that were asked, and the reason I answered I never could see just what they meant by institutional advertising was because I felt Mr. Aldrich was trying to get my opinion as to the value of institutional advertising.

If Marshall Field & Company put an advertisement in a Chicago paper, merely saying "Marshall Field & Company, largest retail drygoods merchants in the
(3506) world, occupying the largest space of any retailers in the world," with a picture of their retail business occupying an entire square block and nothing more, that would be called institutional advertising.

4262 Friday, September 29, 1922. 10:30 A. M.

W. W. VINCENT, a witness called on behalf of the L. P. Larson Jr. Company, was recalled for further cross-examination by Mr. Mayer, and testified as follows:

I am the same person who has testified in this case before.

I have now before me all of the Touche, Niven & Company working sheets.

I have Touche, Niven & Company working sheet No. 790. It is partly in the handwriting of Mr. Hagberg,
4263 and there is a notation there of mine. The notation in my handwriting reads:

"Period 12/20/14 to 12/20/15 on which the above payment was made. Final accounting by Canadian Govt. date 11/8/20 calls for 20,003.41."

That was one of the working sheets that I used and on which I relied when I prepared the Touche, Niven & Company report filed in this case as Larson Exhibit 132. That sheet purports to cover and to show the amount of the Canadian business profits tax apparently for 1916. As originally prepared that sheet shows a tax of $12,000. The meaning of what I wrote on the sheet, which I have just read, is apparently that the final bill that came in in 1920 was for $20,003.41 for that
(3507) period. Before I made the notation on that sheet
4264 I satisfied myself that the facts stated in the notation were correct. The document which has just been shown me appears to be an original receipt from the Canadian Government to Wm. Wrigley Jr. Company, dated November 8, 1920, showing the assessment for business profits war taxes for the period from December 20, 1915, to have been $20,003.41. The document also shows that the sum of $20,003.41 was paid to the Canadian Commissioner of Taxation on December 7, 1920, so that I had all the information that now appears on the working sheet 790 before I prepared the Touche, Niven & Company filed report. The following is written in lead pencil in my handwriting at the bottom of the sheet: "Int. becomes exigible." I wrote that before I prepared the Touche, Niven & Company filed report. Those

words were taken from the Canadian blank form which has just been shown me.

(Mr. Mayer offered in evidence the said Canadian Government receipt for $20,003.41. It was received in evidence and marked Wrigley Exhibit 10.

Mr. Mayer also offered in evidence the Touche, Niven & Company working sheet No. 790, being one of the sheets contained in "Touche working papers No. 21, taken from Touche-Niven 19 for identification." Sheet was offered, was received in evidence and marked Wrigley Exhibit 11.)

(Wrigley Exhibit 10)

(3508) Said Wrigley Exhibit 11 is as follows: Wrigley Exhibit 11.

"Wm. Wrigley, Jr. Company
Canada Business Profit War Tax 22
Gen Ledger a/c 790

1916
Dec 7 P. R.
Credit Wm. Wrigley Jr. Co. 12000.00
Period 12/20/14 to 12/20/15 on which the above payment was made. Final accounting by Canadian Govt date 11/8/20 calls for 20003.41
Int. becomes exigible"

(3509) My impression is that the words "Int. becomes exigible" which I wrote on Wrigley Exhibit 11, were taken from the Canadian receipt now marked Wrigley Exhibit 10. Either from that sheet or something that was attached to this sheet at the time that I saw it.

Examining Wrigley Exhibit 10, I will say there is nothing on that that makes me think that I took the words "Int. becomes exigible" from that exhibit. It was on a paper that was attached to this sheet at the time that I saw it. It is not on this particular Exhibit 10 which I have before me. I did not mean anything by the words "Int. becomes exigible" except that it was an unusual word. I do not know whether I know what the word means or not. I think it means interest attaches from a certain date or accrues. I simply wrote it there because it was an unusual word, and it was taken from the papers which were attached to Wrigley Exhibit 10 at the time it was presented to me.

What that paper purported to be, I don't remember. It didn't make any impression on me. At any rate, the

words "Int. becomes exigible", as I wrote them, was not intended to be a notation with respect to whether interest is or is not recoverable in this case, or is or is not recoverable on any item in this case. It had nothing to do with this case at all.

I have before me Touche Niven & Company working sheet No. 678, which has to do with the U. P. S. coupons. It was among the papers used in preparing the filed Touche-Niven report. I would not say it was before me.

(Following a question put to the witness by Mr. Mayer, Mr. Aldrich admitted that the witness had testified that before the Touche, Niven & Company report, Larson Exhibit 132, was filed, the witness had made or
(3510) caused to be made calculations respecting the contingent liability for U. P. S. coupons on a basis of 33⅓%, 40%, 50% and 60%.)

I have before me Touche, Niven & Company working sheets numbered 685 and 686. I think they are in Hagberg's handwriting. There is nothing on them in my handwriting. Those sheets were before me when I pre-
4271 pared Touche, Niven & Company's filed report.

"N. K. F." at the top of sheet 685 refers to N. K. Fairbanks. My impression is that those two sheets relate to coupons issued by other people. One of these was Fairbanks. I believe they are in the soap business. They evidently issued coupons with their soap. I don't know whether they stopped issuing them in 1916. I didn't have anything to do with the preparation of that sheet, and I know very little about it. Those sheets are in Hagberg's handwriting. I would assume from the heading of the
4272 columns that those two sheets purport to show the number of coupons issued by N. K. Fairbanks & Company at the period shown on those sheets and the numbers that were redeemed during the period shown thereon and the percentages.

As to whether those sheets also show that those coupons were issued on each five cent sale, and the coupon had a redeemable value of one-half cent, I will say there is a notation at the bottom of page 686 which reads: "5C sale coupon 1/2C. Now, what that means I don't
4273 know." I prepared that part of Touche, Niven & Company report, Larson Exhibit 132, that had to do with the U. P. S. coupons. As to whether I mean to say that when I prepared that filed report I did not know what

the meaning was of pages 685 and 686, and what they showed, I will say I don't know that I had those sheets in
(3511) mind at all. I did not take them into consideration when I prepared the filed report for Touche, Niven & Company because I did not think the experience of N. K. Fairbanks in issuing coupons was similar to that of the Wrigley Company. There were some differences in the method of issuing and redeeming.

As to what the differences were, I will say, that I would like to withdraw my answer that there were differences. I do not know that I considered those two pages. If I had considered them, I would have found from those
4274 pages that N. K. Fairbanks & Company issued coupons with soap called Santa Claus, that the soap sold for five cents a package, that the coupons had an exchangeable value of 1/2 cent value, and that in the years 1910 to 1911, 43.9 of the coupons issued were redeemed. Those sheets apparently show by years the number of coupons issued with Santa Claus soap, the number redeemed, the percentage of redemption and similar information with regard to soap sold by N. K. Fairbanks under the name of Clairette with which coupons were issued in the same way. They also show the total number issued of both and the total number of redeemed, and also shows the percentage of redemption in its entirety. They show re-
4275 demptions aggregating 51.93% of the coupons issued with the Santa Claus soap, and a redemption of 41.81% of the coupons issued with the Clairette soap and a percentage of 46.25 of all the coupons issued with both soaps up to that time.

(Mr. Mayer offered in evidence the sheets referred to by the witness numbered 685 and 686. Mr. Aldrich objected on the ground of immateriality and irrelevancy, and that the experience of a soap manufacturer were not
(3512) the same as Wrigley's. The objection was overruled.

The said working sheets, 685 and 686, so offered, were received in evidence and marked Wrigley Exhibit 12, sheets A and B.)

4277 (Wrigley Exhibit 12, Sheet A.)

4278 (Wrigley Exthibit 12, Sheet B.)

Said Wrigley Exhibits, Sheet A and Sheet B show the number of coupons issued and the number redeemed in connection with Santa Claus soap and also in connection with Clairette soap, each separately, and the total of both, by years beginning 1910 and ending 1920, and they

show that no coupons were issued after the year 1918, and that redemptions of both Santa Claus and Clairette coupons continued until the end of the period shown on said exhibits, and they also show the annual percentage of redemption of each class of coupons, and redemptions aggregating 51.93 per cent of all the coupons issued with Santa Claus soap and redemptions aggregating 41.81 per cent of all coupons issued with Clairette soap, and that 46.25 per cent of all coupons issued with both soaps was redeemed.

(3513) I gave some testimony regarding the Jewel Tea
4279 Company.

The document now shown me is the 1920 published report of the Jewel Tea Company. As to whether I referred to that heretofore, I don't know whether it was 1920 or some other year. This may be the one. I cannot tell whether the document now shown me is a photographic copy of the reports of the Jewel Tea Company for the years 1915 and 1916. I would have to compare it with the report to say definitely.

(Mr. Mayer offered the said reports in evidence, subject to verification. Mr. Aldrich objected on the ground of immateriality and irrelevancy, stating that he was not objecting to the fact that they were photographic copies or that they had no been identified or their source explained, but independent of those questions.

The master sustained the objection stating that he was doing so without finally passing on the question as to whether or not the Wrigley Company might not introduce it as part of its case.

4282 Mr. Mayer then offered the documents as original evidence as part of the defense in the case. The master asked what the statements purported to be. Mr. Mayer stated they purported to be statements by Touche, Niven & Company that they examined the records of the Jewel Tea Company, that they certified to the correctness of the balance sheets, and the balance sheets showed that the Jewel Tea Company was using profit sharing coupons; and that they had reserves for redemption of
(3514) profit sharing coupons, and those reserves varied from time to time.

The master said he was not prepared to receive the balance sheets of the Jewel Tea Company without knowing anything about their business.

4284 Mr. Mayer then stated that he was not offering the

sheets for the purpose of showing the physical condition of the Jewel Tea Company but to show facts with respect to which Touche, Niven & Company had knowledge, as before stated. The master then ruled squarely and fully sustained the objection.

4285 Report entitled on the outside cover "Fifth Annual Report of Jewel Tea Co., Inc. 1920," so offered but not received in evidence, was marked "Wrigley Exhibit 13, offered, not admitted."

Said Wrigley Exhibit 13—Offered—Not Admitted, shows a balance sheet as of December 31, 1920, of the Jewel Tea Co. Inc. on which in the item "Current Liabilities" there appears an item of "Reserve for Redemption of Profit Sharing Coupons $29,788.82," and it also contains a certificate by Touche, Niven & Co. that they have audited the books and accounts of the Jewel Tea Company, Inc. for the year ended December 31, 1920, and certify to the correctness of said balance sheet.

(3515) (Reports of business of Jewel Tea Company for
4285 years 1915 and 1916, so offered, but not received in evidence, were marked "Wrigley Exhibit 14, offered, not admitted."

Said Wrigley Exhibit 14—Offered—Not Admitted shows the initial balance sheet of Jewel Tea Company as of December 31, 1915, on which appears under "Current Liabilities" an item of "Reserve for Redemption of Profit Sharing Coupons $64,953.67, and said exhibit also shows a balance sheet of said Company as of December 31, 1916, on which appears among "Current Liabilities" an item of "Reserve for Redemption of Profit Sharing Coupons" amounting to $81,349.10. Said exhibit also contains a certificate by Touche, Niven & Co. to the effect that they have examined the books and accounts of the Jewel Tea Co. Inc. and that said balance sheets correctly set forth the assets and liabilities.

(3516) (Mr. Mayer then asked the witness whether Touche, Niven & Company had not been auditors for the Jewel Tea Company in the years 1915 to 1920, inclusive. The master sustained an objection of Mr. Aldrich.

Mr. Mayer then asked the witness whether, when he was preparing Larson Exhibit 132, the Touche, Niven & Company report, he knew the Jewel Tea Company had been issuing Profit Sharing Coupons. The master sustained Mr. Aldrich's objection.

Mr. Mayer then asked the witness whether he did not

know at the same time that the Jewel Tea Company had been setting up a reserve on account of liability for the issuance by them of Profit Sharing Coupons. The master sustained an objection.

4286 Mr. Mayer then offered to prove by the witness that when, that is, before he prepared Touche, Niven & Company filed report, Larson Exhibit 132, that he knew that Touche, Niven & Company then were and for some years theretofore had been the auditors of the Jewel Tea Company, and had examined their books at least annually and certified to the correctness thereof, and that they knew that during that period of time the Jewel Tea Company were issuing Profit Sharing Coupons and setting up reserves on account of a liability because of their issuance.

Mr. Aldrich objected, and the objection was sustained.

Mr. Mayer also offered to prove by the witness that he knew while he was engaged in preparing Larson Exhibit 132 that the Jewel Tea Company had quit issuing
(3517) profit sharing coupons in 1916, and that nevertheless coupons continued to come in for redemption at all times thereafter.

Mr. Aldrich's objection was sustained.)

4288 Friday, September 29, 1922. 2:00 P. M.

HENRY SCHOTT, called as a witness on behalf of the Wm. Wrigley Jr. Company, being first duly sworn, on direct examination by Mr. Mayer, testified:

My name is Henry Schott. I live at 1312 Ritchie Place. I have lived in Chicago seven years. I have vice-president and general manager of the Seaman Paper Com-
4289 pany. That company has twelve branches. Headquarters in Chicago. Main office is here, New York and various cities. In 1921 it did about fifty-one millions of business. Not as large a business last year due to increase in prices.

I have been told in a general way by Mr. Mayer the nature of the suit now on hearing. I have been informed that in this suit on hearing the court has found the Wm. Wrigley Jr. Company in the use of its Wrigley's Doublemint gum package has infringed a color scheme of Larson, and that the court has ordered the Wrigley Company

to account to Larson for the profits earned by the Wrigley Company for the sale of its Doublemint gum in the infringing package.

I have had experience which enables me to testify as to how the profits should be arrived at in such a case in so
(3518) far as pertains to the distribution of advertising expenses. That experience has been first, as advertising manager, and then as sales and advertising manager of Montgomery, Ward & Company's mail order house in their publication of their catalogs and such other advertising as they had. I was at Montgomery, Ward & Company a little over five years, covering the period 1915 to 1921. I was director of publicity, that was my title there,
4290 correspondent advertising man; then I was made vice-president in charge of advertising and sales following that.

4291 I was for twelve years or more on the Kansas City Star, a newspaper, Kansas City, Missouri, in the editorial side, and there first became interested in advertising. I left there to start an advertising agency and built it on the basis that advertising was simply selling an article. I was president of what was known as the Ferry-Hanly-Schott Advertising Company until I came to Montgomery, Ward & Company. I was with the Ferry-Hanly-Schott Advertising Company for approximately three years. I was the Schott whose name appeared in that corporate name. As to what kind of advertising I have come in contact with and handled during my experience, I will say the largest advertising volume I handled, of course, was at Montgomery Ward's, that ran several million dollars a year. It was primarily in the books, also farm paper advertising, newspaper advertising, magazine advertising. Those advertisements went over the entire world, primarily the United States.

A large majority of it was in the distribution of catalogs to the middle section of the United States, but it went to Japan, Mexico and Africa.

(3519) The Ferry-Hanly-Schott Company had clients whose advertising was extensive. For instance, the Southern Pine Company was one of our accounts, and that ran, I should say, from one hundred and fifty to two hundred and fifty thousand dollars a year,—a group of lumber manufacturers.

4293 I had experience with Montgomery Ward & Company covering five years, in which I had charge of all the ad-

vertising expenditures of the firm, and the business is divided into departments, say some fifty of them. In order to find out if a department was profitable, it was necessary, among their other charges, to find out what their advertising had cost them. Further than that, instead of an entire department, we had to find on each item whether the advertising costs as related to the amount of sales that particular advertisement had brought was of a percentage that would permit of a profit on the article offered. Further, if an advertised article did not respond to advertising, any one single article, it was concluded that not only was it not profitable, but it was not welcome to the buying public, and it would go out of stock.

The book issued by Montgomery, Ward & Company during the period that I was with them would contain perhaps fifty to seventy-five thousand articles. The type of catalog that was issued would contain approximately a thousand pages. It would range sometimes 900, sometimes 1100, 1025, according to the amount of merchandise we were carrying. It was usual to have a picture of the article that was being handled, and also some descriptive matter. There were instances where we would advertise two or more different kinds or numbers of the same kind, such as shoes. It was necessary for us to ascertain what
(3520) part of the advertising expense was incurred because of each one of those articles.

I will state the way we did it: We take a book, say it
4296 is a thousand pages, and we know that that book cost $500,000, and we know that one page in that book we will say cost $250. We ascertain the cost of the book by taking the cost of the paper, the printing, the typesetting, proof corrections, the mailing, addressing, wrapping, and every element of cost going into that book from the time it is laid out until it reaches the customer's hands, that is apportioned by pages and by books. It is known that that page (indicating) will cost so much per square inch. There were some expenses that were peculiar to some pages, and did not apply to other pages. There might be a different grade of paper, enamel paper or plain newsprint paper. When we wanted to ascertain the cost of a
4297 particular page we took into consideration what that particular page actually cost. And what it cost to get up the cuts and to print the entire page as it is. In that way we ascertained the actual number of dollars that it cost us to print, bind and distribute by mail each page.

Now, if one item in there occupies, we will say, 16 square inches, and another occupies 64 square inches the one carrying the 16 square inches was charged on the proportionate basis that 16 is to the total area of the page, that including the entire manufacture and delivery of the book; the one carrying the 64 square inches was charged naturally the space that it would occupy, that 64 is to the total area of the book.

As to whether we made actual measurements to ascertain those proportions, I will say those were measured and then charged to that item. Now, when that book's
(3521) life had ended, which was on the issuance of the new book,—we issued two each year—when the new book came out in the fall and was in the customer's hands the old book was dead. The accounts for that book were closed just as if the man had died and the account was closed in the bank. We charged up the expenses of advertising as they came right straight through. We did not carry
4298 anything on our books for good will or deferred assets for the expense of advertising. At the end of the six months when the book was dead that was an absolutely closed account.

Turning to page 295 of the Montgomery Ward book which is before me as No. 91, I will point out just exactly what we did with that page.

Take 24E1380, that was measured in square inches by a scale, and the space on there, knowing that this page, say, of coated paper cost $500, say there were 100 square inches on that page, it was charged for the proportionate amount. If this is 3-1/2 square inches, it stood as 3-1/2 is to 100, previously this cut having been charged to it, and so on, and the composition.

In getting the measurement of the specific thing we squared up. The space which I indicate belongs there in fact. That is due to the fact that all the reading matter therein contained referred to the boot shown on it. Everything there referred to that. By "that" I mean the pic-
4299 ture marked in the book "24E1380".

Referring to the cut on the same page, 295 of this No. 91 catalog, to the item which reads "Girls' brown 'solid as-a-rock' Hi-Cut Shoes", I will explain how we charged the cost of that advertisement between the different shoes
(3522) shown thereon. On that particular item there are three different numbers you see, 24E2642, 24E2643 and 24E2644. That space was measured according to the

square inch area and down very close into a decimal, but here you have three items all apportioned to this space. As a consequence they would take the three of them and split the total results here among the three, that is, the cost here would be charged to those three items. Each of those three pairs of shoes pictured there bore one-third of the cost of the square in which those pictures appeared. Now, they could find in the sales very definitely what amount of sales they had from these.

4300 For instance, these shoes are back in the rear end of the house with those numbers in order, and the customer orders by that number, so the sale is credited to that particular article and the result of the advertising is found very definitely. The precise cost of the advertising is determined very accurately. Now, that serves, of course, to show you whether this shoe had been profitable. For instance, if we could sell that shoe at a five per cent selling cost, which I consider right together with advertising, and we found this shoe over here (indicating another shoe) cost fourteen per cent selling cost, which had a lower top, we would find he was losing money on one of the shoes with his high selling cost and making money on this one which had a five per cent selling cost, and if he was a good merchant, he would begin to decide that the public wanted this product (indicating) but not that.

4301 By "this product" I mean the high shoe and not this product, which is the low top shoe.

It gave him a very definite knowledge of whether his (3523) advertising was paying or was not paying, and also made it—each book was changed every year on that basis. When we came to get out our next book, which would have the same general class of merchandise in it, fall goods, then those accounts would have been referred to by the merchandise departments and by the sales department and by the division managers and they would make their purchases largely governed by these results.

That is the only way we could keep exact tab on the results of advertising and what it cost to advertise each single article specified in the catalog.

4302 If we found the advertisement of those three pairs of shoes which occupy substantially the same space in the square referred to, that one of those articles was more popular than the other, as reflected in our sales, we could tell exactly what the expense of selling that was by the space occupied.

On page 295 there appears the title "Montgomery Ward & Co., Chicago" at the bottom. That was charged to the page. You see it is a part of this page here, and went to this merchandise on the page, and in turn that page was charged to the shoe sections as if it were a department store where they had to stand on their own feet, if they did not make money off of their advertising, they could not lay it to any other sections. And each product, in accordance with the actual space occupied by actual measurement, paid its proportionate share of the space occupied by Montgomery, Ward & Company's name.

On the outside cover of the catalogue which is before me, "Catalog & Buyers' Guide No. 91", is contained the
(3524) name "Montgomery, Ward & Co." and the words "Satisfaction guaranteed or your money back, Chicago" and some other advertising. I will explain how that was charged as between the different articles contained in the catalogue.

4303 The cost of this paper (indicating) which is again a different grade of paper was figured at actual cost, there was no estimate on it, the cost of the printing, the cost of its weight in the mails,—I want to show you how far down the line they had to go on that to get the proper charge—and then it was charged to each division proportioned on the amount of space that this division occupied in the entire book.

I will explain completely how we charged up the expense of that cover page to the balance of the book in the number of pages and the articles shown on each page. Say there are a thousand pages in the book, and there is a division that occupies, say, 32 pages, and aside from where it uses special grades of paper it has a certain proportion of the entire cost of that book. This cover is charged to that division—I am speaking of a merchandising department—is charged to that department according to the proportion of space it occupies in the book. It would not also be charged to each subdivision of each item the same way. In that case it would not be charged to each item; it would be charged to the clothing division. The ultimate effect would be the same, but it would not be brought down to a one thousandth or one millionth of a cent, but the ultimate effect would be the same and would act on each item in the book.

4304 The explanations that I have made concerning page 295 of that book are applicable to the entire book.

(3525) (Mr. Lane offered in evidence page 295 of the Montgomery, Ward & Company catalogue No. 91 and also the outside cover thereof, as Wrigley's Exhibits 15-A and 15-B. Mr. Aldrich objected on the ground of immateriality and irrelevancy. The master said they were offered merely as illustrating the witness' testimony, and overruled the objection.

4305 At the request of Mr. Lane, Mr. Aldrich agreed that the photographic copies of the cover and the page referred to might be used in the case with the same force and effect as the originals, and put in the record.

Said page 295 and front outside cover so offered were received in evidence and marked, respectively, Exhibit 15-A and 15-B.)

4306 (Wrigley Exhibit 15-A)

4307 (Wrigley Exhibit 15-B)

(3526) Page 295 contains items in different colors. Those 4308 are taken into consideration in considering the cost of that page. When we have pages all in one color, the same rule is applicable as though where the color shows.

I have examined Larson Exhibits No. 30 to 36, both inclusive, being seven books showing the advertising of Wm. Wrigley Jr. Company during this accounting period from July 28, 1914, to November 12, 1918. I have seen the various photographs that are in the record of 4309 the proceedings before the master. I understand that a third party, Larson, is interested in the profits, and the Wrigley Company were, in spending the money for advertising, using the money of the Larson Company and that they are now called upon to pay the profits over to Larson.

As to how the cost of the advertisements should be distributed in order to ascertain the actual profits earned by Wrigley's Doublemint gum and to be paid over to Mr. Larson, I will say I would charge it by the space of merchandise occupied in that particular piece of advertising, such merchandise as is advertised. For instance, if you are advertising Spearmint gum in one piece of copy—you understand the meaning of that—one advertisement, then that gum would stand the full charge for that advertising space; if you had two pieces of gum in 4310 there, or two pieces of merchandise, and the display of each was approximately the same or the same, I would

charge one-half to one and one-half to the other, directly to that merchandise that is shown there.

Assuming that the court is trying to find out what the actual profits are earned by the Wrigley Company on
(3527) their Doublemint gum in order that the proper amount of profits or the properly ascertained amount of profits may be paid over to the real owner, a man named Lar-
4313 son, not connected with the company, I would charge Larson Exhibit 37, which advertises Wrigley's Doublemint, all down to the top of the bottom line to Wrigley's Doublemint; the rest of the space, or the bottom line, should be charged to Wrigley's Spearmint. I would charge the cost of the advertisement off as an expense in the proportions mentioned by me at the time the expense is incurred. I would charge it as an expense to selling cost. I cannot see anything in advertising except selling cost, exactly as you would send out a salesman.

The similarity between that particular advertisement and sending out a salesman is that the object in both cases is to sell merchandise. If you send out a salesman carrying a line of Doublemint, he is sent out to sell Doublemint gum. If that he his exclusive line, you certainly are going to charge his entire account against Doublemint; you are not going to charge it against any other product if you are making shoes.

Supposing you are making a different kind of gum, I
4314 will say the only way you can figure your profits or whether, say Doublemint is a profitable article, is to make the proper charges against it. If a salesman is going out to travel, if it is space on a billboard, space in newspapers, there is no way in the world you can find out whether it is profitable or not unless you make those charges direct against that division or department of your business. In my opinion, a written or printed advertisement of a product should be charged precisely the
(3528) same as though you hired a person to orally sell that same product. Or, to give an example, girls going around the street distributing is another case of selling or advertising, which is the same thing. If a girl goes around the street giving away Wrigley's Juicy Fruit, I would call that an advertising expense, in that case. Your advertising and selling expense are after all the same thing; they may be separated. They are different types of advertising, or different types of selling.

As to whether in my opinion any part of that adver-

tisement on page 917 should be charged to the good will
4315 of the Wrigley business, I will say I would never charge advertising to good will. I cannot conceive of the propriety of dividing the advertising expenses of the Wrigley Company for the advertisements I have seen on a basis of sales. It would not give you any information about your profits. That is because you might take one item and spend a million dollars advertising and that item would sell five million dollars worth of merchandise. You might take another item at the same price—you have to have that understood—and spend half a million dollars, or fifty per cent of the same amount, in advertising and sell ten million dollars worth. Now, if you took your sales basis, it would be giving you just exactly the
4316 wrong information, the information you do not want. Your big profit was in the half million dollars appropriation and not in the million dollars appropriation, that was your profitable article. If you are merchandising properly there, you would then decide that the people did not want the one on which you had spent a million dollars, it was not a popular item or did not fit the public taste, better get out of it, I am going to stick to the half
(3529) million dollar item, and put my other half million dollars onto that, because all merchandising naturally follows the line of least resistance so far as the customer is concerned in my opinion.

In other words, my advertising results in profitable sales of the advertised article, while the same amount spent in advertising another article at the same price may result in doing business on that second article at a loss.

In my opinion, all advertising of every product does not result in a valuable good will. Some advertising results in a great deal of loss.

4317 I am familiar with the Wrigley advertisements as shown in those exhibits. Basing my opinion as to what would happen if the Wrigley Company should stop advertising on experience I have actually had, I will say I think if the Wrigley Company should stop advertising tomorrow, absolutely drop out of the field, that there would be a short period in which it would go along on their momentum, but I think within six months your decline would start, and if the Wrigley Company stayed out of advertising for two years, I would say I think it would be gone. I said I was speaking of experience. In

other words, I don't want to give a general opinion on it. That is the case of sapolio which is the best case I know. For ten or fifteen years sapolio was a very, very broad and widely advertised article. There was a change in the corporation, a death or something, and the new own-
4318 ers decided to save a million or a million seven hundred and fifty thousand dollars a year in their advertising expenditures. They did that I think for two and one-half or three years and their business had practically disap-
(3530) peared. Then they went in to spend and bring it back. If it is once gone, it is practically impossible to revive. That was the case of St. Jacob's Oil, the same experience, they stopped advertising and lasted only a couple of years. I think if Wrigley should stop advertising two years, he would be out of business as an important factor.

In my opinion, it has got to be a continuity of advertising with anything like chewing gum. I think the American Chicle Company proved that with Yucatan. They slowed up in their advertising and Wrigley went by them.

Looking at Larson Exhibit 38, and being asked to state in my opinion how that should be charged in order to ascertain exactly what profits are made on Doublemint so the Wrigley Company can turn them over to the real
4319 owner, a stranger, I will say the advertisement is dominated absolutely by Doublemint in the illustration and display and space. There is an incidental reference "Made by Wm. Wrigley Jr. Company, manufacturers of the famous Wrigley's Spearmint, made everywhere," that ought to be charged to Spearmint, the rest of it I would make an absolute charge to Doublemint entire.

Looking at Larson Exhibit 41, which is an advertisement in French, and assuming there is nothing in it that refers to any product other than Spearmint and Doublemint, I would distribute that charge half to Spearmint and half to Doublemint.

The fact that the word "Wrigley's" in that advertise-
4320 ment is in larger type than anything else is no reason for charging any part of the expense of the space occupied by that word to anything excepting the particular
(3531) products mentioned in the advertisement, namely, Spearmint and Doublemint. I will state why: You have Spearmint here and Doublemint here. To neither of those do you have any sole right of use. For instance,

anybody can use Spearmint. You have attached "Wrigley's" to the "Spearmint" and it is exactly what I should do as an advertising man. I would never carry a piece of advertising, a piece of merchandise, without attaching a proper name, particularly if it had a peculiar distinctiveness, it is then taken as almost an advertising axiom.

"Kodak" was the name of a camera and was advertised as kodak for twenty or twenty-five years until it became a generic word. Then the Eastman Kodak Company began attaching "Eastman" to it to distinguish their kodak.

The Victrola people have the same problem in front of them today. People go in to buy a phonograph and ask
4321 for a Victrola so they sell them anything as a Victrola. Any merchandise you have that you can attach your name to directly, it is very important in my opinion. If they are asking for Spearmint, that might be any Spearmint; if they ask for Wrigley's Spearmint, you have your own product being sold and that helps sell Spearmint.

Referring to Larson Exhibit 45, I would charge that to Doublemint gum with the exception of the space occupied by Spearmint or in reference to Spearmint which would be charged to Spearmint.

4322 It is not right to say that I would make actual measurements and charge Doublemint with everything that refers to it and Spearmint with everything that refers to it. I would charge that ad to Doublemint. That is your dominating piece of copy on there. There is an incidental reference to Spearmint. I would charge that
(3532) space to Spearmint, and there is a box at your right-hand lower corner which refers to Spearmint and I would charge that entirely to Spearmint, the rest of it would be charged to Doublemint advertising.

I would charge Larson Exhibit 46 as follows: I would take my measurement here of Spearmint in this case, in the cut of Spearmint at the foot of the page. I would also measure the cut of Doublemint at the foot of the page and I would take a measurement of the package of Wrigley's Spearmint at the top of the page in the girl's hand, then take the square inches of the entire ad and apply the square inch space of the two Spearmint packages and of the Doublemint. In other words, Spearmint would carry the proportion of the whole ad as is the

space it occupies to the whole ad, and doublemint would
4323 carry its proportion of the whole ad as its space is to the entire square inchage.

If there were 100 lines in that advertisement and the space occupied by the two Spearmint packages occupied fifteen lines, and if the space occupied by the Doublemint package was ten lines, then I would charge Spearmint with 15/25ths of the whole cost and would charge Doublemint with 10/25ths of the whole charge.

In Larson Exhibit 48, you have three items approximately occupying the same space. I would divide that by three, charge one-third of the cost of that advertisement to Juicy Fruit, one-third to Doublemint, and one-third to Spearmint. I am saying that upon the assumption that the measurement would show each of the three packages to occupy the same space. I do not believe I would get down to a thousandth part of an inch in the proposition.

(3533) If I were actually making the account, I would not
4324 get down to higher mathematics. The principle I have just stated with regard to the specific advertisements would apply in my opinion to the balance of the Wrigley advertisements. I don't know of any other way to keep account of advertising costs properly.

Cross-Examination by Mr. Aldrich.

In my experience, my aim in all cases has been to find the difference between cost and yield on the various articles sold or dealt in by the company with which I have been connected, by departments. We treat those divisions as if they were each separate stores. That was my practice at Montgomery Ward's.

4325 We charged each article with its proportionate cost of the catalog according to the method I have stated, and then through information that came from the sales department when the book was nearing its end we were enabled to know its profitableness or unprofitableness, so far as the selling cost was concerned. The operating cost might have still made it unprofitable. I am speaking only of the sales cost. We carried no good will, so far as I know, at Montgomery Ward's. We carry none in the present concern. I know there is such a thing as good will connected with both of the businesses.

4326 I think good will is created by the character of the

people in the business, their business methods, the worthiness of their merchandise, the way they keep their word, the way they have developed their sales. There are so many things go into good will that almost every operation that a man conducts in the business is a part of
(3534) his good will and helps to build up good will.

I don't know the history of the doctrine of good will as it has grown up in the law. I did not know that at first it was attached to the premises in which the business was carried on. I did not know that at a time when all business or most business was local and the means of communication and information were not so widespread as they are at the present day good will attached to the premises in which a business was carried on in the eyes
4327 of the law. That is new to me. I know very little about the law, I am frank to say. I know that as transportation and means of communication has increased that there has been a change in business. And instead of business being merely local, it has become national or international, so that the personal contact between the proprietors of a business and its customers is not so immediate and direct as it was in the old time when business was local. And yet the element of keeping their contracts and conducting their business on an honorable basis is an important now as it was then.

It is through these large business transactions where a business becomes national or international that the name
4328 of a firm comes to stand for that business. The name of the firm applied to the merchandise it sells does. The fact that the business has been successful for a term of years, that it has come to have a reputation of keeping its contracts, doing as Montgomery Ward or Sears, Roebuck do, and have a satisfied customer, has come to make the name of the firm valuable.

(3535) Advertising is an element in creating good will. It is an important element if the firm that has that name is keeping its promises, is selling good mechandise. I want to make it clear. I can take the name "Jones" and
4329 advertise a million dollars on the names "Jones," and if Jones has not a first-class article back of him, I mean in its grade, in its product as good merchandise, if that merchandise does not interest the people and if Mr. Jones lets his value go down or slump off, your million dollars for the advertising of the name "Jones" might as well in my opinion be thrown in the lake, or better, for after

you have done that I do not think there is any chance of bringing the name "Jones" back at a reasonable cost.

As to what I understand by institutional advertising, I would say that the advertising the Standard Oil Company of Indiana is now running in the papers would be called institutional advertising very largely, such as I
4330 have seen. Institutional advertising is advertising that is written, the subject of which is general to the institution without any specific reference to any specific merchandise.

My opinion is that an advertisement that gives great prominence to the name of the institution and mentions in a very subordinate way the name of some of the products sold by it destroys its character as institutional advertising and makes it an advertisement of the products named. That is the only way that I can find to know whether your advertising of an article is paying or not.

I would say that Heinz's advertisement "Heinz's 57 Varieties" would be institutional advertising. "57 varieties" would become a trade name. I would not say that
(3536) the fact that it has become a trade name is the test
4331 of whether it is institutional or not. I don't know.
4332 As to whether the fact that the phrase "57 varieties" has become a trade name makes the advertising institutional, I will say I would have to know more about the inside of the Heinz sales, their sales methods, what proportion of their business is the products that are advertised there to give you a very definite answer on that subject.

As to whether I understand that the 57 varieties only refers to a pickle, they usually advertise the pickle with it, they show the pickle on the 57 varieties usually, as I have seen the advertising.

4333 I don't say that unless the advertising has been carried on to such an extent that the name advertised has become a trade-mark or trade name it is not institutional. My opinion is if I were advertising, take a case of Dr. Price's Baking Powder or Royal Baking Powder, every time I am advertising I am advertising baking powder, that is not institutional.

As to whether I limit institutional advertising to cases where the name of the institution has been so long and so widely advertised that it has become a trademark or a trade name, I will say that my idea of institutional advertising was a case where a piece of advertising copy

was written in regard to that institution for the first purpose of getting the institution, bring its practices or its methods or its history before the public rather than an attempt to sell any merchandise directly from that advertising, and I do not want to give any other impression or institutional advertising.

(3537) As to whether I say that Larson Exhibit 49 has in 4334 it no element of institutional advertising because there are two of the products sold by the Wm. Wrigley Jr. Company mentioned thereon, I will say I would not call it that. I would call it purely selling advertising. I have never handled institutional advertising and have never believed in institutional advertising.

I note that the name "Wrigley's" is not the name of a company. But I could not tell you how much advertising would have to be done to make that a trademark or trade name in the sense I have used in reference to Heinz. I know Mr. Wrigley has spent millions of dollars in ad- 4335 vertising. I don't know how much he spent during the accounting period.

Assuming that about six million six hundred thousand dollars was spent during the accounting period in which the word "Wrigley's" is given prominence in most of the advertising of that character, it would help me to form my opinion as to whether or not that would advertise the institution with which Mr. Wrigley is connected. I don't know that in so far as any advertising advertises the institution or company that is made prominent in it, that it is deemed institutional advertising in the advertising world. The only value in my opinion of this word "Wrigley's" is where it is attached to chewing gum. If it were "Wrigley's" and the rest of it were "rubber heels" down there, it would not be worth a dollar in my 4336 opinion, for gum. I mean "Wrigley's" has a value as associated and connected with gum primarily.

The word "Wrigley's" has been so prominently used in advertising campaigns costing such large amounts of money that it has a connection with the gum business.

(3538) As to whether they have advertised the institution, I will answer that in this way, that the only value of the word "Wrigley's" in my opinion in any of this advertising is where it is connected with gum. Now, if that's the institution, as you call it, it has a value, but it means nothing to me excepting where it is connected with gum.

The word "Wrigley's," I suppose, has meant gum for

a number of years. I don't know just what number of
4337 years that would cover. I don't know whether Mr. Aldrich and I have the same meaning of the word "institutional." I have no definite definition or no definition that I know of to be finally accepted for institutional advertising. I have never heard institutional advertising definitely defined. I have a general idea that institutional advertising is as I have explained to you. I do not believe that "Wrigley's" attached to chewing gum is institutional advertising.

4338 In my original examination by Mr. Mayer, I said the word "kodak" had become a generic term, a word that I think had gotten into the dictionary until they had, so far as I know, the word patented and protected. If people wanted to ask for a camera, they would say "Give me a kodak" and so the Hawk Eye and other cameras became known in general business way as a kodak. So the Eastman people to protect themselves so that people would ask for their particular article of merchandise began attaching the name "Eastman" to it, "Eastman Kodak."

As to whether I say Larson Exhibit 49 is not institutional because it has the purpose of making sales, I will
4339 say I cannot answer that question because I don't know
(3559) any definition of the word "institutional" as applied to advertising except as very vague. I consider that
4340 from the standpoint of advertising, taking the words "Spearmint" and "Doublemint," when people ask for Spearmint or Doublemint they are asking for Wrigley's Spearmint or Wrigley's Doublemint and not somebody else's and my theory of it is this: that the Wrigley Company found that people will come in to buy Spearmint, asking for Spearmint, which might have been Smith's or Jones', and they proceeded to tie up the "Wrigley's" to "Spearmint" very prominently.

As to what is the purpose of institutional advertising if we had such pure and simple, I will say that I have in mind as institutional advertising where you would take space and give a history, a story about the concern, a very general piece of advertising, without any intention of direct sales of merchandise from it. When you come to trying to sell merchandise directly from that copy I can see in it nothing else than sales copy. Selling adver-
4341 tising, that's the only purpose in the world that advertising can have, is to sell that merchandise.

In the kind of advertising I have just described as in my mind constituting institutional advertising, there is no desire or element of attempting to make sales directly by such copy. Sometimes there is no thought at all of making sales. Sometimes it is done as pure vanity. Sometimes sop to publication.

I did not know that the Wrigley Company had seven million five hundred thousand dollars carried in its balance sheet as good will.

(The witness was then asked whether he knew at the
(3540) time the Wrigley Company set that up, at the time of the organization of the present Wm. Wrigley Jr. Company, it substantially represented the amount they had expended for advertising to that day. Mr. Mayer objected on the ground that the question was not cross-examination, that it was incompetent, irrelevant and immaterial, and incorrectly set forth the record. The objection was overruled.)

4342 I did not know that. I don't know anything about the occasions when the courts have been called upon to decide the value of good will. I know that they have been called upon to deal with it. I think I have in mind now occasions when that was done. To my knowledge, it was not done in the reorganization of Montgomery, Ward & Company. I can give you the instance if you want it, the one I happened to have read. I have in mind that in the case of an infringer it would be entirely possible to spend all of the earnings of the business during the infringing period in advertising. I don't know whether I would
4343 apply the same rule in a case of that kind that I have recommended as a means of ascertaining the difference between cost and yield as a matter of conducting business for myself. I don't know as I know enough about the situation of the Larson Company or the smaller details of the relations between the two companies.

As to whether I want the master to understand here that for the purpose of keeping books in such a case as this, and to ascertain the profits, that the same methods and rules were in my opinion to be applied as where for
(3541) my own benefit I wanted to determine the relative difference or value of my several departments, I will say I
4344 don't want the master to understand anything. I simply want to give you the actual methods and my experiences and I know of no other way of getting the value

of advertising or its returns than that. I don't know of any other way to do it.

As to the effect the fact that the Wrigley Company was to pay over the Doublemint profits during the accounting period to the Larson Company had on my testimony, I will say the fact of paying over to the Larson Company has no influence on my testimony one way or the other. Counsel for the Larson Company infer, or perhaps I jumped at a conclusion, that I was endeavoring to impress the master with statements that I made beyond the mere fact, matter of fact statements, which I don't want any one to infer or imply.

So far as my experience goes and my knowledge goes
4345 and my competency to give an opinion here, I am just telling how the books should be kept to ascertain the profitableness or unprofitableness of the several branches of a business for the guidance of the managers and directors of that business. That is as far as I want to be understood as going.

I cannot see how the idea that the master is charged with a duty to ascertain the profits with the idea of turning them over to the Larson Company here should in any manner affect my view of the question.

As to how I would go about to ascertain the value of the good will of a business as a gain of that business, not a profit, but as a gain of that business during a period of years, I will say if you were to ask me in regard to good
4346 will, if I had a business, that would depend in the first
(3542) place on the nature of the business. If I were the Inland Steel Company, it would be an entirely different method you see than if it were Eastman's Kodak and that is a matter I think that no man can definitely decide. How in the world any one can come to an actual conclusion that can be set up in the books as to what good will is worth I don't know. I have never been able to find out.

4347 Thursday, October 12, 1922, 11 A. M.

(Belmont Hotel, New York City.)

LEE JOSEPH HART, called as a witness on behalf of the Wm. Wrigley Jr. Company, being first duly sworn, testified as follows on direct examination by Mr. Mayer:

My name is Lee Joseph Hart. I reside at 1415 East 29th Street, Brooklyn. I have lived in Brooklyn fifteen
4348 years. I am treasurer and auditor of Park & Tilford, manufacturers of candy and tintext, a dye product, and the selling of perfumery, cigars and cigarettes. They are both a wholesale and retail concern. The concern is 82 years old. Its business is done throughout the United States principally and the volume has reached more than fifteen million dollars a year.

Park & Tilford advertise. The principal advertising is through periodicals and newspapers. Their advertis-
4349 ing is national and has been so for several years. They do business in the principal cities of the United States, and have done so for many years.

(3543) I have been connected with Park & Tilford for about two years. My duties with Park & Tilford are that of controller, which is in charge of the accounting of the business, and I am also treasurer and supervise the work of the treasurer's office. It is part of my duty to determine and direct how disbursements should be charged and allocated.

I am a certified public accountant of New York state. For over six years I was connected with firms of profes-
4350 sional certified public accountants, two years with Arthur Young & Company and about two years with Lybrand, Ross Brothers & Montgomery, and the balance of the time with smaller concerns. Those are the two principal accounting firms that I worked for. Arthur Young & Company has offices in New York and Chicago. They did have in Kansas City and Milwaukee and they worked over the entire United States. Lybrand, Ross Brothers & Montgomery work over the United States, they have seven or eight offices.

I was also connected for four years with R. H. Macy &
4351 Co. R. H. Macy & Co. has a department store located at

34th Street and Broadway. They are one of the largest in New York. Their business runs about fifty million dollars a year now.

I was assistant to controller of that concern. While I was with them, Macy & Company did extensive advertising. At the time I was with Macy they had advertisements appearing in newspapers and periodicals daily. The expense ran into several hundred thousand dollars per year, the exact figures I do not know, bordering on a million. Park & Tilford have been advertising through
4352 various mediums for a number of years. Their adver-
(3544) tising expense is about three hundred thousand dollars per year.

Park & Tilford have used periodicals and magazines for advertising. I have had experience with advertising with concerns of a part only of the products that those concerns have been dealing in. That is true, among others, of Park & Tilford. I have been concerned as an
4353 accountant with the method of charging such advertisements. As an illustration, we have had advertisements in which the products of our candy, toilet articles, grocery and cigar departments were advertised and in allocating the expenses of such an advertisement where more than one product appeared it has been our custom to measure the space occupied by the description or pictures of the articles advertised, and have allocated the expense of the entire advertisement on the basis of the space measured.

In the advertisements to which I have just referred the name of the institution, Park & Tilford, appeared.
4354 I have brought here a sample of an advertisement that was actually used and the advertising expense of which was actually distributed in the way I have stated. It was allocated by Park & Tilford in the manner I have just described. In my opinion as an expert accountant, that was the proper method of dividing the expense of that particular advertisement.

(Mr. Mayer offered in evidence said advertisement of Park & Tilford. It was received in evidence and marked Wrigley Exhibit 16.)

4354½ Wrigley Exhibit 16.

(3545) On the margin of Wrigley Exhibit 16 there is written
4355 in ink the following: "Cost of this advertisement distributed equally over four products." That is in my
4356 handwriting. I made that ink notation about six weeks

ago to show how the expenses had been divided. The four products among which the expense of Wrigley Exhibit 16 was equally divided are candy, toilet articles, groceries, cigars and tobacco,—cigars and tobacco treated as one.

In making equal distribution of the expense of that among the four items that I have just mentioned, I assumed in the rough from observation that those four spaces were equal. The nature of the advertisement is such that measuring is unnecessary.

At the foot of the advertisement "Park & Tilford, New York" appears in conspicuous type. The entire expense was distributed over the four items, and no part of it was charged to advertising the name of Park & Tilford.

4357 I have here another illustration of a Park & Tilford advertisement. The expense of that was charged to toilet articles, with a further sub-division to the two products advertised, both being toilet articles, Houbigant and Guerlain. The expense of that advertisement was charged one-half to advertising Houbigant and the other half to advertising Guerlain.

While I have been with Park & Tilford, and also my prior experience, the general formula that I used in allocating the expense of advertising was to distribute the expense in proportion to the prominence given to the various articles. In this particular advertisement the prominence was equal. By the word "prominence" I mean the space used in the description and picture of the article.

This perfumery advertisement contains something in
(3546) ink on the bottom of it reading: "This ad charged
4358 equally to Houbigant and Guerlain." That is in my handwriting. That memorandum was made about six weeks ago, or a little longer.

(Mr. Mayer offered the said advertisement in evidence. Mr. Aldrich objected. The objection was overruled. The said advertisement of Park & Tilford of Houbigant and Guerlain, so offered, was received in evidence and marked Wrigley Exhibit 17.)

4359 Wrigley Exhibit 17.

(3547) (Mr. Mayer asked the witness: Do you understand
4360 that in this case in which you are a witness the court has held that Wm. Wrigley Jr. Company was selling what

is known as Wrigley's Doublemint gum in a certain color package which the court held must be considered as an infringement of a gum package marketed by one Larson, or Larson Company, and the court enjoined the Wrigley Company from continuing the use of that particular color scheme for Wrigley's Doublemint gum and directed the Wrigley Company to account to Larson for the profits that were made by the sale of Wrigley's Doublemint gum in that infringing package during the period of its use from July, 1914, to November, 1918, and that we are now having an accounting before Master Morrison with respect to what those profits are, and that we are now investigating the question as to how advertising of one or more, but less than all the products of the Wrigley Company, ought in fairness to be distributed or allocated in order to ascertain what the actual profits were which were earned by the sale of Wrigley's Doublemint gum during the accounting period arising out of the use of this infringing package?)

(The witness said "I do.")

(Mr. Mayer then asked the witness what in the case of the type just stated to him he would say from his ex-
4361 perience is the proper formula to use in determining how to distribute the cost of advertising of one or more, but less than all, of the Wrigley products. Mr. Aldrich objected on the ground of immateriality and irrelevancy,
(3548) that the question of how it should be allocated is settled by the terms of the decree, and that to ask this witness such a question is to ask him to assume the functions of the master. The objection was overruled.)

(The witness continued:)

I think the proper method of distributing advertising is the one outlined as Park & Tilford's method. In other words, in my opinion as an accountant and from my experience, I believe that the formula that I have described as used by Park & Tilford is the formula that should be used in the case on hearing.

In a case where I was trying to ascertain the actual profits made by a product because they were to be paid over to a third party, or to a stranger to the business, I would make actual measurements of space used by the different products.

4362 I have examined the books that have been offered in evidence in the case on hearing and known as Larson Ex-

hibits 30 to 36 inclusive that contain samples of Wrigley Company's advertising. I examined the copies of advertisements that appear therein, during the accounting period. In my opinion as an expert, I would apply the same rule for determining how to distribute the cost of those advertisements that I have already specified, and I would do that in a case of the type now on hearing.

4363 Looking at Larson Exhibit 37, I will say that in a case of the type on hearing, in my opinion, the expense of that advertisement should be charged entirely to the sale of Doublemint. I would charge the entire expense of the line on that advertisement on page 917, reading: "Made by the makers of the famous Wrigley's Spearmint" to Doublemint, because that advertisement is drawing on (3549) the reputation of an established article to sell a new one. This advertisement is drawing on a reputation al-4364 ready established to market the product Doublemint.

Referring to the photograph of an advertisement on page 919 of the record before the master, in my opinion the entire expense of that advertisement should be charged to Doublemint in order to ascertain the profits to be paid over to Larson in a case of the type now on hearing.

Assuming that the language of Larson Exhibit 41, which is in French, has reference equally to Spearmint and Doublemint, the cost of that advertisement should be distributed for the purpose of fairly and equitably ascertaining the profits to be paid over to Larson in such a case as is now on hearing, in the ratio of the prominence given to the packages pictured, which are apparently equal to the naked eye without measuring. By the word "prominence", I mean the space occupied.

4365 I have examined Larson Exhibit 44, and have read that entire advertisement. In order to ascertain the profits to be paid to Larson in a case of the type now on hearing, that advertisement should be charged to the expense of Spearmint and Doublemint in the proportions of the space occupied by the pictures of the packages.

(Mr. Mayer then stated to the witness that in all questions put to the witness with regard to the allocation of specific Wrigley advertisements, that he wanted the witness to assume that the purpose of the question was to ascertain how much profits should be paid to Larson in

a case of the type on hearing, so that Mr. Mayer did not have to repeat it each time. The witness assented.)

(3550) I have examined Larson Exhibit No. 49. In my
4366 opinion, the expense of that advertisement should be charged in the ratio of the space occupied by the picture of the two packages. In that particular advertisement, the first word which is "Wrigley's" is evidently in very much larger type than any other type in the advertisement. In the distribution of the expense of the advertisement, no consideration should be given to that fact, because the name "Wrigley's" applies to both products, Wrigley's Spearmint and Wrigley's Doublemint.

4367 In my opinion, an advertisement of that type, or an advertisement of any specific Wrigley product like Wrigley's Spearmint or Wrigley's Doublemint does not advance the sale of any of his gum not named in the advertisement. In my opinion, the whole cost should be charged to the products named, and no part charged to products not named, because this advertisement is placed with the hope of creating a demand for the products named only. If the advertisement is successful and creates that kind of a demand, that is, for the articles named so that people buy the articles named, it will retard the sale of Wrigley gum not named in the advertisement. That is because unless this advertisement converts a new user to gum, it will take one of the users from another gum, if the advertising is successful. In other words, referring to this particular advertisement, Larson Exhibit 49, which advertises only Spearmint and Doublemint, if it is a successful advertisement, it will create sales for one of those two brands, and will satisfy the de-
4368 mand of the chewer for gum at the expense of other brands manufactured by Wrigley or other people. In other words, there is a certain amount of chewing that
(3551) one individual will do, and while he is chewing one gum he can't be chewing another gum.

Looking at Larson Exhibit No. 51, the cost of that advertisement should be allocated on the basis of other named products. In other words, the expense of the advertisement should be distributed on the basis of the distribution already made of advertising. Assuming that this advertising is an advance advertisement of Wrigley's Spearmint and Wrigley's Doublemint, and was fol-
4369 lowed by other advertising immediately afterwards of

Wrigley's Doublemint and Wrigley's Spearmint, I would say this advertisement should be apportioned on the basis of the direct advertising. In other words, would be apportioned over the products on the basis of the advertising given to the specified products. That is to say, if after publishing the advertisement shown by Larson Exhibit 51, it was followed up with an advertisement of Spearmint alone, and eliminating the question of time for the moment, I would charge the whole expense of that advertisement to Spearmint. If, on the other hand, Larson Exhibit 51 was to anticipate subsequent advertise-
4370 ments of Spearmint and Doublemint, then I would charge the expense of Larson Exhibit 51 to both Doublemint and Spearmint in the proportion of the amounts spent on the two products for advertising the two products. If that advertisement, Larson Exhibit 51, was published by Wrigley's concurrently with Wrigley's other advertising, then in my opinion, the expense of that advertisement should be distributed in the same way. I have a faint recollection of the type of advertising such as was done by Dodge Brothers with merely their name first before anything else appeared, or before any product appeared. It was followed up subsequently with "Dodge Brothers, automobiles." In my opinion, the expense of the initial
(3552) advertisement stating only "Dodge Brothers" should be charged, where the advertisement is followed up
4371 shortly thereafter by an advertisement of "Dodge Brothers, automobiles," to the expense of selling Dodge Brothers automobiles.

I regard the expense of advertising as an expense of selling. I will give you my reasons for that. Advertising is a means of introducing a product to be sold. It is salesman in a little different form than an individual. It acquaints the public with the product to be sold and is designed to create a demand for the product advertised. In my opinion, so far as distributing the expense of an advertisement of a specific product is concerned, it should be treated the same as hiring traveling salesmen to sell that same product. I make no difference in theory.

The cost of those Wrigley advertisements that I have been referring to should be charged against those prod-
4372 ducts as a selling expense when the expenses are incurred. From my own experience, advertising must be continuous in order to maintain the sales of an advertised

product, and from observation I have seen that when advertising stops it is immediately reflected in the sale of the product.

I think the fair way of distributing advertising is on
4373 the basis of the space and not on sales of the advertised products respectively, because the money spent for advertising is a fact whether the sales materialize or not.

(3553) *Cross-Examination by Mr. Aldrich.*

Keeping the accounts in the several houses with which I have been connected in the manner I have described, my chief object was to ascertain the cost of introducing and selling each article.

4374 In the Park & Tilford case, we have different departments, the departmental managers' salaries or compensation depending upon the profits or success of their several departments. The cost of advertising the product is charged first to the department which has charge of its sale.

As to how we apportion the advertising among the several articles belonging to the department so as to ascertain from our sales of that article during a year whether or not the individual article has been profitable or otherwise, I will say the expense of a department is apportioned over the products handled in that department as outlined in my previous answer. We do not, however, do that with all products, it is only where the volume of business in the product is sufficient to warrant
4375 the account necessary and the work necessary in doing it. Where the sales of an advertised product are low, we group all such products in one heading—miscellaneous products. We apportion the space occupied by the Park & Tilford name and anything concerning the firm among the different departments on the basis of the space given to the several departments in each advertisement. It follows then, that if all the article in a given advertisement were articles sold by one department, that the expense of the Park & Tilford name, and anything concerning that name or corporation, would be charged to that department. That would be on the theory that the Park & Tilford name was helping to sell the articles named in the advertisement.

(3554) Park & Tilford have particular articles that have
4376 become well known as Park & Tilford articles, and have been so for many years. A few instances are candy, groceries. Park & Tilford handle a number of brands which are known as Park & Tilford's—they are not manufacturers—among them are Hayo de Monterey cigars, Houbigant perfumery for a period of ten years, Guerlain perfumery, and Angelus creams, which are the products of Louis Phillippe, Incorporated, in New York. Those products are handled exclusively by Park & Tilford.

I have had experience in an accounting case where the rights of a third party were involved. I don't know
4377 whether it would be called a well known case or not. The case in question was the stock of a contracting company which had changed hands and the third party was interested in that. It was not a case of infringement.

As to whether it is within my experience that often an amount is expended in advertising a brand that for a considerable period exceeds the amount realized from its sales, I will say I have never known of a case where the cost of advertising exceeded the amount realized from sales. That is true, even in the period of introducing it. Such advertising would be wasted if you did, because, unless the product is distributed sufficiently to meet the demands created by the advertisement, why, nobody would be able to buy the merchandise. Advertising and sales must go together, and do.

I don't see how it could be that in the introduction of a new brand amounts are expended that exceed the returns on the brand at the time. I have never seen a
(3555) case, and cannot conceive of such a case, because an advertisement for a product that is not to be bought, is not ready for distribution, would be a wasteful advertisement.

4378 I have known of cases where a manufacturer is ready to deliver the article he is advertising, but with a view to its introduction enters upon a campaign of advertising so extensive and so costly that the expenditure far exceeds, during the initial period, any returns on the product itself, but that is for a very short time only, a period of a few months. If at the end of the few months the sales of the product have not materialized to justify their advertisement, it was treated as a bad experiment and the amount lost.

It would not be possible, in my opinion, that by persisting in this advertising and going on for a long period, one would be finally successful in the introduction of the goods. The success of the goods will depend upon the product itself, its quality and the service given by the house that manufactures. Persistent advertising will not do it. It must be backed up by quality and service.

4379 If the manufacturer has during the period of 4½ years expended such sums in advertising and allocating such advertisement in the manner I have described, that when the court steps in by an injunction and orders him to come in and account, he claims that he has suffered a loss taking the 4½ years together, and if such manufacturer retains the name it has been advertising—Doublemint in this instance—and is compelled by the decree of the court to only change the color scheme of his package, but he retains the name Doublemint, I (3556) would still think that the method of allocation I have stated would be fair, even if its results were that no profits would be yielded to the injured party.

4380 As to whether I would apply the same principle in an accounting where it was shown that the person infringing had, from the proceeds of his infringement, built a new factory just before the expiration of the infringing period, I will say the question of allocating the expense of advertising is one that is not dependent upon the results of this advertising. As I stated in a previous answer, the expense of advertising is a fact whether the results materialize or not. Advertising does not create good will. Good will is created by the backing up of the advertising, or producing what the advertising calls for, the quality and service given by the manufacturer. Good will also depends on the extent or volume of sales and the success of business. The value of business and success of

4381 the business is assisted and aided by advertising. If the quality of the goods and the treatment of the customers by the house, and so forth, are such as to justify a continuance of trade by the customers with the house, the advertising assists if the business is to be made a large one. Good will is the capitalized value of the earning power of a business. When I said capitalized value of the earning power of a business, I meant that you first ascertain what the tangible assets of the business are, and allow a rea-

sonable return on such tangible assets, and then it is the earning power of the business over and above the tangible assets that you have to deal with in ascertaining the value of good will. The tangible assets have an earning power.

In ascertaining good will, I would capitalize the excess of a reasonable return on the tangible assets which are subtracted from the total earnings before I would at-
(3557) tempt to solve my problem of good will.

4382 I know of no other basis, but I know of no rule for doing it. That is the basis upon which it is done, but there is no fixed rule for it. I say that as a New York accountant. I say just that, that this is the basis of determining good will, but there is no rule for determining its value, or fixing it. I mean absolutely in its terms.

4383 I would not apply to the value of the good will of Tiffany & Company, or Park & Tilford or to a house like either of those which have been so long in existence and so successful, the same multiplier and years of purchase that I would allow to a new firm that had an experience of only six years although its earnings had been great during the period of six years. In fact, each case is judged by the circumstances surrounding that particular case.

As to what portion of the case is judged by the circumstances surrounding that particular case, and what the elements are that are indeterminate and dependent upon the history of the firm or corporation whose good will I
4384 was seeking to ascertain, I will say the nature of the business; whether there were any unusual circumstances which brought about the profits shown; whether or not it was a war industry; whether or not it was a lasting industry; whether it is a fad. There are many many things to be determined. Businesses frequently spring up and make a lot of money within a few months that prove to be only fads, and three years hence they are forgotten.

4385 I know of no rule valuing good will. I know it has been very often valued by the courts in this state. No rule that I know of has been adopted.

(3558) If I were charged with the duty of ascertaining the fair reasonable value of the good will of the Wrigley Company, personally I would take the earnings of the Wrigley Company for the past 10 years. The period

4386 covered by any person placing a value on good will is a matter of opinion, is what they wish, and from their earnings of the past 10 years I would fix what I thought to be the value of the Wrigley Company. The question of good will as far as I have seen it has been a matter of barter and exchange. I have never seen an instance where a value was placed on good will simply for the purpose of having that value.

As to how I would estimate the value of good will just from the earnings, I will say I must assume first that I have a reason for establishing this good will, and assuming that the investment—the return on the investment required was named, I would make my good will value based on that.

4387 In other words, let me express myself more fully. If I, for my own purposes, were valuing the good will of the Wrigley Company, I would first fix a return expected from this valuation and make my good will on that basis.

If I were making an investigation for a court to ascertain the value of the good will of the Wrigley Company, and I had no selfish purpose to serve, and having ascertained their earnings for 10 years, I would next deter-

4388 mine their present worth, their net assets at the present time, the difference between what they owe and what they own. I would then get the court to fix for me what return should be allowed. If the court wanted my judgment as an expert and an accountant as to the amount of return what he should allow, I would then make a study

4389 of the chewing gum industry and find what I thought of

(3559) that. It would depend upon the nature of the business. Having ascertained a per cent to be valued, I would then determine the amount of earnings in excess of earnings on the tangible assets, and fix the good will as the amount producing such earnings in excess of earnings on the tangible assets, using the same figure which had been determined before, the same percentage. In other words, I would capitalize the excess earnings over and above the reasonable return on the tangible assets at the same rate that I had allowed on the tangible assets, and I would capitalize my earnings. When I say such capitalize such earnings, I mean I would fix that as the value of the good will, that would be capitalizing.

4390 If I was making the return which I had fixed on the tangible assets 8%, and the business showed through a

course of years that there was $2,000,000 in excess of such return on the tangible assets each year, I would take the actual excess earnings for a past period of years for a time—I think I said 10 years, and average them.

4391 I don't know of any such thing as a multiplier of a
4392 certain number of years purchase in my problem. I am not sure I understand what is meant by the term "years of purchase". It is a word used by counsel for the Larson Company, and not by me. I am not familiar with the term.

(Mr. Aldrich stated that he understood that after ascertaining the residual return on the tangible net assets, the excess is the value of the good will for one year; and then the number of years purchase, that is the multiplier. When it shall be one year's purchase or four years' purchase, or ten years' purchase depends on the nature of
(3560) the business, and is determined by the Judge or other person charged with the duty of making the valuation.)

I am not familiar with the method stated by Mr. Al-
4393 drich. I have not had occasion as an accountant, or in my capacity as an expert, to consider that question in the terms that Mr. Aldrich expresses it. I have had occasion to consider that question, but not in the terms of purchase. That is an expression with which I am not familiar. I have had occasion several times to furnish the information for valuing good will. I have never had occasion to value it myself, but I have furnished the information from which it was valued. The information that was required of me in that connection was, broadly speaking, the earnings, the assets, the net assets and the earnings of a business over a period of years. I have been asked to certify to the earnings of the business. In each instance with which I have been associated, the value was placed by barter and exchange between interested parties, and I was not an interested party. I have never had occasion to value the good will of a corpora-
4394 tion for an estate, nor for tax purposes. I have never had occasion to value good will at all or furnish information for the purpose of having others value it in settling up a partnership on the death of one of the partners.

In allocating advertising, I have always treated the expense as a selling expense, and I have never considered that it had any deferred or residual value. I have never seen a case where it had a deferred or residual

value, and I have never seen a corporation in that prac-
(3561) tice that did defer any part of the advertising ex-
4395 pense. It is customary with many businesses and corporations to put any value on their books that they actually have. Many businesses and corporations don't carry a good will account at all, but they do defer other expenses; many expenses when spent covering a period yet to come are carried on the books, and that is accepted accounting procedure. Expenses purely that cover a specific period, such as taxes, insurance, interest and things of that kind; when paid on a date to cover a period yet to come those values are carried on the books. It is right to say they are an unearned matter; under their theory they are unearned yet, have not been taken up by the lapse of time. Those things are not in the nature of fixed charges. They never should be. Taxes and interest and obligations outstanding, that are interest bearing, are in the nature of fixed charges.

4396 Other expenses that I know of that are so treated are interest, taxes, insurance, salaries, salesmen's drawing accounts, prepaid commissions, and possibly others where the expenses have been made but the benefits to be derived are yet to come. Salesmen's commissions are not in the nature of fixed charges. They are frequently paid in advance. That is a mere drawing account of salesmen's account, and they are incurred in a contract with the salesman by which he is to have a drawing account.

In my testimony with respect to the advertisements in which the name "Wrigley" or "Wrigley's" appears so
4397 prominently, I stated that the name "Wrigley's" applies to both products mentioned in the advertisement, and for that reason no attention should be paid—no further attention should be paid to the space occupied by the name.

(3562) I observe that in each instance also there appears on the package the name "Wrigley's".

4398 If I were in Mr. Larson's place and was the injured party, I still would think that what I have stated would be a fair way of apportioning this advertising. I think the way is fair and the changing of my position would not change that one bit.

By institutional advertising, I understand is meant advertising an institution such as R. H. Macy & Company or Tiffany & Company or an institution of that kind, or

Park & Tilford, and so forth. To constitute such institutional advertising, the advertisement must contain
4399 their name, address, and the nature of their business, such as: Tiffany & Company, Fifth Avenue. Jewelry; Park & Tilford, Fifth Avenue, Grocers. The aim of such advertising is to attract people to the institution.

In my opinion where a business has been long established and widely disseminated of its name, it becomes well known throughout the country as a firm. If a firm so advertised supplies a good product, treats its customers right, makes deliveries promptly, have the products sold conform with any representations made with reference thereto, so that it establishes a good reputation, the name of that firm comes to have a value, and it
4400 keeps the confidence that the public places in it. I mean that the public gets to know an institution as turning out a certain quality of goods. Long continuous good service gives the firm a national reputation. Advertising does not give it its good name. Without advertising, it would not be widely known. It would correspond to what business formerly was before means of communication and
(3563) transportation had developed as they are now, and each business was local in its character. Publicity is an
4401 essential part of the wide reputation, but not of good reputation.

As to whether I confine advertising that is institutional in character to the mere mention of the firm's name without the mention of the character of goods or products in which it deals, I will say institutional advertising advertises the institution; where the product is mentioned, it is advertising the product and the institution, rather both, but institutional advertising is the institution without the product.

4402 Advertising cannot be classified as strictly institutional advertising if it mentions goods. I will explain. My definition of institutional advertising was that it advertises an institution and not the merchandise that it carries. Many institutions in the United States in advertising their institutions define and outline their policy which applies throughout their entire organization.

I was shown a certain advertisement on my direct examination which had on it nothing but "Wrigley's." I said the cost of it should be apportioned among the goods that had been previously sold, and when Mr. Lane inter-

rupted me and told me it was followed by advertising of Spearmint and Doublemint I said it should be apportioned between the subsequent sales. As to why I first did not define that as institutional advertising, I will say
4403 because it had no name or address, nor anything about an institution. It was purely the name of "Wrigley's". Park & Tilford would not be an institution—just the word "Park & Tilford." "Park & Tilford", New York" is an institution. Park & Tilford do business in other great cities of the United States. They have no branches throughout the United States.
(3564) I do not understand that Park & Tilford spend but a very small percentage in annual advertising of what
4404 Mr. Wrigley spends. I said that Park & Tilford's annual expenditure in advertising is approximately $300,000. But I have not been told what the record shows Mr. Wrigley expends annually in advertising.

Assuming that Wrigley spend approximately $6,600,000 during the infringing period, I will admit the annual expenditure of Park & Tilford is very much less than that of the Wrigley Company.
4405 We have no branch house in many other cities of the United States. We do business in other cities, but we have no direct agents or branches in other cities. Our goods are introduced widely throughout the United States and we have customers everywhere practically in the United States.

My explanation that the word "Wrigley's" does not constitute institutional advertising in the advertisement
4406 appearing at page 1153 of the record, that is Larson Exhibit 51, where nothing else was named, is because "Wrigley's" is not an institution where people trade. Institutional advertising in my opinion is where the advertisement is designed to bring people to the institution.

I don't think Heinz's 57 Varieties is institutional advertising, because it is not intended to bring customers to
4407 the place of business. As to why under my definition of institutional advertising, page 1038 of the record, Larson Exhibit 44, is not institutional advertising, I will say because it is advertising a package or a product that is on sale throughout the United States in many many places.

I don't say that the advertisement advertises Wrig-
(3565) leys. I see the name "Wrigley's", but I don't see the

advertisement for the Wrigley Company. I see "Wrigley's Spearmint" and "Wrigley's Doublemint".

4408 As to whether I connect the word "Wrigley's" with the Wrigley Company in any way I look at it, I will say I do connect it with the manufacture of Wrigley's gum, but whether that is the Wrigley Company or not I do not know. That is true of all these advertisements to which Mr. Mayer directed my attention.

I have no authority for so limiting the meaning of institutional advertising. It is evolved out of my consciousness.

As to whether I have had any experience that justified me in making that distinction, I will say the word "institutional" advertising is a phrase with which I am not awfully familiar. I have heard of institutional adver-

4409 tising before. It is referred to among retail establishments, not so much among manufacturers and wholesalers. Heinz is a manufacturer and wholesaler.

I am not very familiar with Studebaker advertising. I am not able to say whether or not they have done a great deal of institutional advertising. They are manufacturers.

Park & Tilford has not written contracts with the diffent department managers whose compensation as such managers depended upon the yield of their respective departments. The contract is evidenced by a memorandum

4410 in the private files of some of the officials. It is a typewritten memorandum, not signed. Those memorandums had nothing whatever to do with the allotment of the space occupied in the advertising by the name "Park & Tilford". I know that because I make up the figures. I make up the allotments, and the contract has nothing to do with it. I am familiar with what the contracts are.

(3566) Those memoranda are not in my possession or control. They are in the control of one of the vice-presidents. I am familiar with them, have access to them, and make up the charges against the department. Such memoranda do not deal with any of the expenses of the department. It simply deals with the net profits of the departments.

When expense has been incurred for advertising, I am

4411 the person who allots that expense among the several departments. I do not attend to the details myself. The memoranda on the two samples of advertising which have

been produced here were not made for the purpose of alloting the expense.

The prominence given to the name of "Macy's" in their advertising was alloted among the several departments when I was with them five years ago, the same as they do at Park & Tilford's. I do not know whether there were any contracts in that case by which the institutional part of it was to be apportioned. One of the members of the firm of Macy & Company, or the controller, would be able to tell about that. I don't know whether the controller would without permission of one of the members of the firm.

I was first spoken to about this case sometime in July
4412 by Mr. Lane. He saw me once since, three days ago. At the time he first saw me, we conferred about 10 or 15 minutes. I did not agree at that time to become a witness. I agreed to become a witness a day or two ago.

I inspected the books of the Wrigley Company during the 4½ years approximately covered by the infringing period here this morning. No statement was made to me with reference to the total amount of advertising ex-
(3567) pended by the Wrigley Company other than to say it was millions.

4413 At the time Mr. Aldrich asked me about Park & Tilford's institutional advertising of $300,000, I knew the Wrigley Company had spent millions in a period of years, but how many millions I did not know. They did not tell me how much had been charged in the account.

4414 Thursday, October 12, 1922. 2:45 P. M.

(New York City)

CLINTON W. TOMS, called as a witness on behalf of the Wm. Wrigley Jr. Company, being first duly sworn, testified as follows on direct examination by Mr. Mayer:

My name is Clinton W. Toms. I live at the Seville Hotel, 29th Street and Madison Avenue, New York City.
4415 I am a Vice-president of Liggett & Myers Tobacco Company. I have been connected with that concern 10 years.

Liggett & Myers business in the aggregate is about one hundred seventy-five million dollars sales a year. Of

course, we manufacture all kinds of tobacco, except cigars —plug tobacco, smoking tobacco, cigarettes, little cigars —manufacture and sell, of course. Since I have been connected with that company, its business has extended throughout the entire country, the United States and in some foreign countries.

Some of the principal brands that my company has been engaged in selling in the last few days are Star and Horse Shoe chewing tobacco, Velvet and Duke's Mixture
(3568) smoking tobacco; Fatima, Chesterfield, Piedmont, Richmond, Straight Cut Cigarettes, Recruit Little Cigars.

4416 My company has been in the habit of advertising during the last 10 years. As a general policy, our plan is to spend approximately 5% of the gross value of the sales, some years less and some years more. Our expenditures a year for advertising would be about $5,000,000 in all forms of advertising. We have done that for at least 10 years.

Our advertising is exclusively brand advertising, advertising Fatima Cigarettes as a cigarette brand, Chesterfield Cigarettes, Piedmont, Star and Horse Shoe tobacco, our Velvet tobacco, each is treated as a separate and individual proposition. Our advertising, of course,
4417 has been varied in appeal, depending upon the condition of the brands. We have used magazines, newspapers, painted bulletins, billboards, coupons, tags—valuable tags, theater programs, moving pictures. Not all of them at one time, but all during the past ten years more or less. On all brands of cigarettes that advertising has been practically national. On some of the brands of chewing tobacco it has been more or less localized in some states. For example, we don't advertise Star chewing tobacco in New York City, whereas it might be advertised in Chicago.

I have samples of the Piedmont and Chesterfield advertising of the Liggett & Myers Company to which I have referred. It is advertising we are now using. The two advertisements I now produce are, generally speaking, of a type similar to that which I have already referred to.

(Mr. Mayer offered in evidence the two samples of advertising identified by the witness. Mr. Aldrich objected
(3569) on the ground of immateriality and irrelevancy and

4418 incompetency under any issue in the case. The objection was overruled.

The said advertisements of Liggett & Myers Company advertising Piedmont and Chesterfield cigarettes were received in evidence and marked Wrigley Exhibits 18 and 19, respectively.)

4419 (Wrigley Exhibit 18.)

4420 (Wrigley Exhibit 19.)

(3570) I will explain how we use tags and coupons, and what
4421 they are and how they are issued. Coupons are the printed offer, either for cash or for valuable article, premiums—or for both, and packed in packages of cigarettes and smoking tobacco. Tags—valuable tags—are tobacco tags as, for example, the Horse Shoe on the back of which is safety paper. That is a blank note paper, or something, to prevent it being fraudulent. Nothing is printed on the tags, but one the coupons, of course, is printed the offer.

My connection with my company has been such that the matter of the issuance of these tags and coupons and other types of advertising has been under my supervision. The question of charging the expense of these things, as to how they should be charged, is one of the matters under my supervision. That is true as to the entire time I have been with that company.

4422 Before I became connected with Liggett & Myers Tobacco Company, I was with the American Tobacco Company, had charge of their business in Durham, North Carolina. I was with them approximately 10 years. That concern advertised, but I had nothing whatever to do with the advertising at that time. It is only since the organization of Liggett & Myers Tobacco Company that I have had anything to do with the advertising. That is under my supervision.

(Mr. Mayer then asked the witness from his experience as an advertiser to state what in his opinion was the proper method, the fair proper method of charging the expense of such advertising as the witness had just described. Mr. Aldrich objected on the same grounds as he had previously made to similar questions.

(3571) The master overruled the objection, stating that Mr.
4423 Aldrich's objection applied to all questions of the same character.)

Our advertising is charged directly and entirely to the

brand advertised. All forms of advertising are charged in that manner.

(Mr. Mayer then made a statement to the witness as to what was involved in the hearing before the master similar to that which he made to the witness, Lee Joseph Hart, at page 4360 of the Master's record, and then asked the witness in his opinion how should an advertisement by the Wrigley Company be charged which advertises one or more but not all of the Wrigley Company's products in order to ascertain the profits in the type of case
4424 that Mr. Mayer had just outlined. Mr. Aldrich objected. The master overruled the objection.)

I should say that I would distribute the cost of the
4425 advertisement in proportion to the space that was used. The advertisement would have to be accurately measured as to the space for each brand.

I have examined the seven books of advertising known as Larson Exhibits 30 to 36 inclusive in this case. I have examined the advertisements in those books during the accounting period which began July 28, 1914, and ended November 12, 1918.

Referring now to these particular advertisements, the cost or expense thereof ought to be charged as follows in order to ascertain the profits in the type of case supposed: Those advertising a (specific) cigarette brand I should say should be charged specifically to that brand;
(3572) those advertising more than one brand, the cost should be distributed in proportion to the actual space used by each brand. The proportions so ascertained I would
4426 charge to the brand. In other words, I would limit the entire cost to the product specified in the advertisement. That is all that is advertised. I would treat that as an expense incurred at that time, and charge it to the brand at the time of the advertising.

In my opinion, an expense of that kind is practically the same as a salesman's expense or salary, the same fixed charge against the brand.

As to the difference in my opinion between an advertisement of a specified brand and a salesman who goes on the road for the purpose of selling merely that specific brand, I will say advertising is simply a printed salesman. You can't talk to everybody. You have to reach them by publications.

In my opinion, based upon my experience, I think it is

absolutely necessary to continue advertising if you want
4427 to maintain proper sales. My experience is when you cease to advertise a product the sales gradually and surely decrease.

Looking at Larson Exhibit 37, in my opinion, if you were seeking to honestly find out the profits made in the type of case supposed for the purpose of turning it over to an outsider, to someone other than the Wrigley Company, I should say the entire amount should be entered to Wrigley's Douglemint chewing gum. I don't think the last line on the advertisement: "Made by the makers of the famous Wrigley's Spearmint" would affect the matter, or affect the charge. It is solely an advertise-
(3573) ment of Doublemint. It is just the same as if the name was signed there.

(Mr. Mayer then drew the witness' attention to page 919 of the Master's record, and asked him how, in his opinion, the expense of the advertisement appearing there ought to be charged, always assuming that the questions Mr. Mayer was putting to be directed to the type of case that had been disclosed to the witness, and also assuming that the purpose of it was to ascertain the
4428 profits made from the sale of Doublemint gum to be paid over to an outsider, or stranger.)

I should say it should be charged to Doublemint entirely as an expense at the time it was incurred.

Assuming that the language of the advertisement, Larson Exhibit 41, which is in French, is equally applicable to Wrigley's Spearmint and to Wrigley's Doublemint, the expense should be allocated in proportion to the space occupied by each brand. I can ascertain it by the actual measurement of the advertisements, of the space referring to each name. By "each name" I mean Spearmint and Doublemint, the two packages appearing
4429 at the bottom of the page.

In my opinion, the expense of the advertisement, Larson Exhibit 44, should be divided between the brands in proportion to the actual space occupied by each brand, measuring the facsimile or reproduction of the two packages. I would also measure the text for the purpose of seeing how much pertains to any one of the several products, and I would make the charge in the same
(3574) proportions. I would distribute the cost of the advertisement marked Larson Exhibit 46 in proportion to the

space occupied by the reproduction of the two packages, including the space occupied by the package in the hands of the girl.

4430 If the picture of the Wrigley's Spearmint package and Wrigley's Doublemint package at the bottom of that advertisement are found to be equal after measurement, and if the package of Wrigley's Spearmint gum was shown to be one-quarter of the size of Wrigley's Doublemint package, and if the language and the text is equally applicable to Spearmint and Doublemint and refers only to the Spearmint and Doublemint packages, I would allocate the expense of that advertisement and charge to the Spearmint the actual measurements of the reproduction of the package at the bottom combined with the package reproduced in the hands of the girl as compared with the space occupied by Doublemint. In such a case, five-

4431 ninths of the entire cost would be charged by me to Spearmint, and four-ninths to Doublemint.

I notice that the word "Wrigley's" appears in very large conspicuous type in that advertisement, as it does in some of the others that I have examined. The fact that "Wrigley's" is prominent in that advertisement, or in any of the advertisements which I have examined, whether the word appears alone or whether it appears in immediate connection with the word "Spearmint", or in immediate connection with the word "Doublemint", or in immediate connection with any other specific brand, would not change or affect the opinion I have expressed, because I don't think the name "Wrigley's" in the advertisement is of any value except in connection with

(3575) the brand named. My reasons for that conclusion are that Spearmint is what makes Wrigley's, and Wrigley's has no strength in connection with Spearmint. You are

4432 advertising a specific product and not a trade name, not a manufacturer's name.

From my experience, I don't think if Wrigley advertises Wrigley's Doublemint gum and that advertisement specifies no other product, that it will help the Wrigley Company in selling any other brand of gum than Doublemint gum. I don't think the advertising of a specific product like Wrigley's gum aids in selling any other brand of gum handled by Wrigley.

From my experience in advertising, I will say that where the advertisement refers to no other brand of

cigarettes than Chesterfield cigarettes, such advertising does not aid in selling any other brand of cigarettes. The advertising of Chesterfield cigarettes by name or brand has no effect upon the sale of our other brands of cigarettes.

4433 If we did not advertise Piedmont cigarettes, but extensively advertised Chesterfield cigarettes, I would expect our advertising, if successful, to result in the sale of Chesterfield cigarettes, and normally I would expect to find a decrease in the sale of our non-advertised cigarettes, because your advertising is on a specific brand, which, of course, should increase the consumption of that brand, which means a decrease, possibly, in the consumption of other brands. The tendency would be to lose as much on the brands as you would gain on the advertised brands. Of course, the net result might be altered by some other condition. You can only smoke one cigarette at a time. If your advertising of Chesterfield cigarettes is successful that results in the sale and (3576) consumption of Chesterfield cigarettes. That is our actual experience in the advertising of Chesterifield and Piedmont cigarettes, that Chesterfield has been advertised and has increased, and that Piedmont, without the same advertising, has decreased.

4434 If the Wm. Wrigley Jr. Company manufactures and sells chewing gum and if they manufacture and sell 15 brands, in my opinion the effect of the advertisement on page 1046 of the Master's record would be to decrease the sale of those 13 brands of brand not referred to in that advertisement. That is on the theory that the purchase of one of the advertised brand replaces the possibility of purchase of a non-advertised brand.

As to whether it pays to advertise if you have more than one brand unless you advertise them both, I will say it depends on the taste and the difference in the brands. That has some effect on it, naturally.

4435 The object of introducing new brands is so that if the taste for an existing brand should suddenly decline, or something of that kind, there would be something to supply its place. Otherwise, where you have more than one cigarette you are competing with yourself. Of course, the change in the public taste and the fact that one brand does not respond to advertising frequently prompts you to produce another brand.

I think it would be false accounting to distribute the expenses of such advertisements as I have seen in this case on the basis of the sales of the advertised products. It is an expenditure against a specific product and it is fair that the charge should be against that product, on
(3577) the same principle as a salesman, or any other expenditure to promote the business. It is a direct, specific charge against a specific property.

As to how the expense of Larson Exhibit 51 should be charged if it were the only advertisement involved in
4436 this case, I will say that personally I don't think the advertisement is of any value, but if you did advertise in that manner, then I presume that the charge would have to be distributed against all brands, or taken up as incidental expense. I have never had any experience of that kind. I don't think that advertisement is worth anything. I don't think it is of any value unless it is connected with a brand name. I don't say what it is. The only possible reference there would be of a previous knowledge of Spearmint or Doublemint or some other brand that was manufactured by Wrigley.

If that particular advertisement was a part of an advertising campaign and was followed by the advertisement of Wrigley's Spearmint, I should still think it was a useless advertisement. If it was part of an advertising campaign for the purpose of bringing out a particular flavor called "Doublemint" or "Spearmint" or whatever you want, I would not treat it as an expense of that particular brand unless the brand was specifically mentioned.

(3578) If such an advertisement was painted adjacent to a
4437 bill-board showing Wrigley's Spearmint, and there were no other advertisement involved, and I knew about any other advertisements, I would still think it was a poor
4438 advertisement. As to whether or not under the circumstances stated such an advertisement ought to be treated as an expense of advertising the adjacent Spearmint, or whatever the name of the brand was on the adjacent advertisement, I will say I cannot conceive of a thing like that being done, but if it should be done, I don't see then how you could charge the advertisement to a brand. If it could be connected with a brand, that is, a specific brand is advertised right above it, or next to it, or right below it, in such a case, if it was a part

of the advertisement, why, of course, it should be charged along with the advertisement as a specific, definite part of it. I am expressing that opinion because of my theory that nothing should be charged to a specific product unless the advertisement mentions the product. We packed the coupons I mentioned in individual brands of cigarettes and tobacco, and the tags we attached to the plugs of chewing tobacco.

4439 Liggett & Myers began to do that in 1912. In order for a person to get one of these tin tags he had to buy a package of cigarettes or a package of tobacco, and in the cigarettes the coupons were packed, or with a cut of tobacco the tag was attached. To get a package containing a coupon or a tag, a person had to pay from five to fifteen cents. Possibly in some instances as much as 20 cents, and in a few instances, as for example, glass pound jars of tobacco, they would probably spend 50 cents or 75 cents, retail price. These tags or coupons ultimately got into the hands of the consuming public.

(3579) That is, the individual that smoked the tobacco or
4440 cigarette. The cigarette packages were sealed so the coupon would not be removed before it reached the consumer, and, of course, in the case of plug tobacco, why the consuming public soon found out that the tags were valuable and they demanded tobacco to which the tag was attached.

The coupon was a small piece of safety paper on which the offer was printed. The offer consisted of either a cash value for the individual coupon, or an offer which referred to a catalog in which premiums were offered for so many coupons. To illustrate, if a smoker bought a package of cigarettes and he found in that package a coupon, that coupon was an obligation of Liggett & Myers Company to be redeemed in accordance with the con-

4441 ditions set forth in the Liggett & Myers premium catalog. In order to get that coupon, the smoker paid from five to seventy-five cents, depending upon the number of coupons in the package, but usually in cigarettes it was a coupon of half a cent value for a five cent purchase. In order words, everybody who spent 5 cents got a coupon, and then when he got a coupon he had some paper on which Liggett & Myers promised to do something. That coupon was in every cigarette package, and it had a redeemable value amounting to half a cent, either in

merchandise or in cash. That is, a whole coupon had a half cent value. Then we would print coupons of dif-
4442 ferent denominations, double coupons, for example, twice the value of one coupon. If you paid 10 cents, you got a double one, or two halves. If you paid 15 cents, you would get one and one-half coupons.

(Mr. Mayer stated to the witness that when he spoke of a coupon he wanted the witness to know that he meant
(3580) one of the coupons that went with every 5 cent purchase and was redeemed for a half cent, either in cash or merchandise. The witness assented.)

If a holder who had those coupons wanted to get his cash, they had to be sent to us at our advertising depots located in New York and St. Louis and San Francisco, in accordance with the terms of the offer printed on the
4443 coupon. If the holder of these coupons wanted merchandise instead of cash he would go to the same place. If he wanted merchandise, we had an illustrated catalog which pointed out how many coupons were needed for the different articles of merchandise. That catalog illustrated a part of the merchandise, a great many of the important items and referred to other items without illustrations.

In order to get one of those tin tags the purchaser would have to spend 10 cents. The tin tag he got was affixed to the tobacco that he bought. It was exchangeable for a half a cent in merchandise. It was also ex-
4444 changeable for cash. If the purchaser wanted to exchange that tag for merchandise, he would send it to the advertising depots located in New York, St. Louis and Frisco. His ability to cash that tag was limited in exactly the same way as his ability to cash the coupons. He had to go to the same places, and the procedure was the same, and the catalog was the same. Those tags and coupons were distributed throughout the entire country wherever the brands were on sale.

The offer printed on the coupon stated that they would be redeemed in accordance with the catalog of a certain date, and they were of value to the expiration date of the catalog as stated in the catalog. Every catalog that we issued specified a date when the coupon and tag had to be redeemed. We issued catalogs from time to time.
(3581) We are not issuing coupons and tags now. We discontinued about the middle of 1917. We discontinued by

stopping the packing of them and the use of safety paper on the tags. We issued catalogs from time to time be-
4445 tween 1912 and 1917. After we discontinued packing there tags and coupons in July, 1917, the tags and coupons still continued to come in for redemption. We discontinued the packing in 1917, but under the terms of the
4446 last catalog we were compelled to redeem them until some time in 1918, but as a matter of trade policy we continued to redeem them until 1920, when we finally sent out a notice that we could not redeem any more, feeling that our obligation had been more than fulfilled, but the coupons and tags continued to be received. Occasionally we get a package now which we return to the consumer and call attention to the fact that we are under no obligation to redeem them after a certain date in 1918.

(Mr. Mayer offered in evidence a copy of said notice sent out by Liggett & Myers in 1920. Mr. Aldrich objected. The objection was overruled.

Said form of notice was received in evidence and
4447 marked Wrigley Erhibit 20.) Said exhibit acknowledged receipt of a package of coupons or tags, and said that the last offer to redeem these expired June 30, 1918, and that more than ample time for presenting them having been given "their redemption was discontinued March 15, 1920, so they have no redemption value whatever" and they are being returned.

(3582) The document before me is one of the catalogs that
4448 was issued by my company in due course.

(The catalog was marked for identification, Wrigley Exhibit 21. It was offered in evidence on the objection of Mr. Aldrich. The offer was denied. Whereupon Mr. Mayer withdrew the offer.)

4449 I can state the number of coupons and tags distributed by the Liggett & Myers Company in the manner I have described, beginning with the year 1912.

(Mr. Mayer asked the witness how many. Mr. Aldrich objected on the ground that the question was immaterial and irrelevant. The matter was to be determined by the experience of the Wrigley Company and not by the experience of other coupon users in a dissimilar business. The objection was overruled.)

4453 Approximately four billion seven hundred million coupons were distributed by Liggett & Myers Company in the manner I have described. The face value of the cou-

pons was approximately twenty-four million dollars. The total number of those coupons and tags that were redeemed was between 72 and 73 per cent.

4454 *Cross-Examination by Mr. Aldrich.*

We advertise brands to increase the sales. The brands do not necessarily become well known thereby. The purpose of the advertisement is to educate people to desire
(3583) a particular brand. Such people must know the name
4455 of the brand. Brands become well known. The effect of the advertising, the purpose of it, is to acquaint the public with the brand. Of course the success of the advertising determines frequently with what brand the public becomes acquainted.

I should say advertising an article like cigarettes increases the use of cigarettes by the public. In other words, more and more people are educated to us cigarettes. I should think that would be true also of chewing gum. As to how I reconcile that with my idea that the advertising of one brand decreases the sales of other brands, I will say it works to the injury of the other brands, the fact that it increases your one brand. In other words, it increases our competition with other dealers in cigarettes or advertised articles. The effect of it is also to increase the number of the buying public all the time. I think that Wrigley's wide advertising campaign carried over a number of years has increased the number of chewers of chewing gum. I don't know anything about it specifically, but I should say that that would be the effect of it, judging by my experience in the tobacco business.

As to whether I would attempt to state that there was any such ratio between the advertising of Chesterfield and Piedmont cigarettes that when we ceased to advertise Piedmont and advertised only Chesterfield, that as we gained in the sales of Chesterfield we decreased in the sales of Piedmont, I will say no, not necessarily a specific ratio, but if we advertised Chesterfield and did
4457 not advertise Piedmont, then the natural result would be an increase in Chesterfield and a decrease in Piedmont, although the total of the two brands might be the
(3584) same. The total of the two brands might not be greater. It depends on competition.

As to why, if it does not increase the combined sales of the two brands we advertise a new brand, I will say I could best illustrate it by saying that by advertising Chesterfield cigarettes you make the brand stronger and are able to increase the sales on it, and that you have a stronger power, a more valuable power, but if Chesterfield does not respond to the advertising, you might have to produce a new brand in order to maintain your proportion of the business or to increase your total business.

When we produce a new brand, Chesterfield for instance, assuming that that succeeded in point of time the Piedmont, we don't abandon the Piedmont as an article
4458 of sale. It is a fact that there is a somewhat different flavor or tobacco used in Chesterfield than is in Piedmont, so that it appeals to the differing tastes of people. That is a reason also why people who would not buy Piedmont might be induced to buy Chesterfield.

One of the purposes of the advertising campaign and the adoption of a new brand is to bring about that result and meet a clientele that had not been met by the Piedmont. In other words, if you cannot get consumers to buy Piedmont, they will buy a different combination or different kind of product. Hence, you advertise some other product. One of the purposes in putting emphasis upon the name of the brand is that our customers become addicted to that brand, want it, and do not want anything else.

4459 The American Tobacco Company has widely advertised Durham. That word has come to mean a certain kind or grade of tobacco with a large buying public.

(3585) That 's the name on the package, with a picture of a bull. That name of itself, by reason of the wide publicity given it through advertising, and its long sale has become to be a valuable name. That is also true of our Chesterfield and Piedmont. Advertisers spend money on brands to establish the name. I have not been advised in this case as to any particular amount of money expended by the Wrigley Company in advertising during the infringing period. If, as I am advised, the Wrigley
4460 Company claims to have expended during the infringing period about six million, six hundred thousand dollars, of which they have apportioned in the accounting filed with the master approximately two million nine hundred thousand dollars to Doublemint, I will say that as to whether or not such an expenditure by the Wrigley Com-

pany created a value for the Doublemint brand depends on how it was expended and how successful it was. I should think that if during the infringing period the total sales were $8,557,102.84, then the expenditure of the amount stated in advertising of the character I have seen among the Wrigley Company exhibits during the infringing period would give a value to the brand Doublemint.

4461 I am not familiar with the details, but I was informed that this litigation did not prevent the Wrigley Company from continuing to manufacture Wrigley's Doublemint by simply changing the dress. As to whether I know whether such an expenditure left a value with the brand or name, I will say judging by our experience, it is difficult to state definitely just what value is left, because we have had experiences that we have spent two million dollars advertising a product, and at the end of that time it was really of little, if any, value. On the other hand, we have spent less money on a given product and ob-
(3586) tained a very valuable brand.

4462 What I don't want to say is that advertising necessarily produces a value, but I want to give you, as a result of our experience with advertising, that a large expenditure did not necessarily produce a valuable trade-mark; although a very small expenditure at a certain time and under certain conditions on a certain product has produced a very valuable brand, so that the Wrigley expenditure of $3,000,000 on Doublemint might not have been effective, and might not have produced a valuable brand; on the other hand, it might. I have no knowledge of that.

4463 I was informed a few minutes before I came in here for the first time that the Wrigley Company was manufacturing, since the infringing period, Doublemint under a different color scheme. In the course of my direct examination I said that Spearmint is what makes Wrigley's. I will explain that. I don't think that the name of a manufacturer has any value unless it is identified with the trade marked article. In other words, what I meant by that statement was that if there was not any Spearmint that Wrigley's did not mean anything. That's my opinion about it. In the same way I don't think "Liggett & Myers" means anything except as it is identified with a successful product like Chesterfield or Pied-

mont, or something of that kind,—Fatima, or something of that kind.

I presumed the reason the Wrigley Company used "Wrigley's" with Spearmint was because Spearmint is a generic term and applies to a product of nature and can be used by anybody, just as we have in a few instances had to use "Liggett & Myers," as, for example, "Liggett & Myers' Every Day Smoke", we had to put "Liggett &
(3587) Myers" in in order to properly protect ourselves. That was because we thought "Every Day Smoke" was descriptive. We have had some geographical names which we have treated the same way.

4464 In saying that Spearmint is what made Wrigley's the question was as to the value of an advertisement with the name "Wrigley's" only, and I don't think that that has any value in itself.

I understood that Mr. Wrigley made his success on his Spearmint gum in the first instance. I do not know anything specific about it. The successful advertising and sale of a product by a manufacturing company, or by dealers, build up the name of the house or company doing the advertising and conducting the business. That's on the same principle that a man builds up a reputation for himself by right dealing and right conduct. A business should have character as well as an individual. It is a fact that some houses, whether they are manufacturers or bankers, or tobacco dealers, stand for certain things. On the other hand, other houses stand for quite different things, just like the reputation of a man is valuable. I should say that it is true that the character of a business or the reputation of a man is acquired primarily by the honest conduct of business, fulfillment of contracts and by good advertising in his line. I should say that assuming the character which makes either a man or a business, it becomes national or international with advertising. I regard advertising as a necessary part of the extension of the business so that it becomes national or international, but that advertising is all brought about through the advertising of a product
4467 rather than the advertising of a manufacturer's name. As the product is extended, the manufacturer with a reputation has a broader field of operations. I do not
(3588) know that there is any great value in tying up a name with some individual product unless it is directly con-

nected with it. As I understand, Mr. Aldrich wants to know if Liggett & Myers Tobacco Company was to advertise, say, "Liggett & Myers Chesterfield," granting that Chesterfield has a good standing a good reputation, I don't think that that's of great advantage to Chesterfield cigarettes. If a new brand of tobacco or cigarettes is to be introduced, and a third person proposes to intro-
4468 duce it, and at the same time Liggett & Myers decide to bring out a new brand of tobacco, and if the two brands are of equal merit, and each has two or three millions to expend in its introduction, I would say that it would necessarily follow that Liggett & Myers reach the public earlier than this third person who has not been in the tobacco business, and who has not any reputation in the tobacco business. That is because the public are interested in the brand and the taste of the brand and the character of the brand and not in the manufacturer.

Liggett & Myers distribute its products to jobbers, and jobbers to retailers and retailers deliver to consumers. Of course our salesmen work with the consumers to work up trade for the retail dealers and back to the jobbers, that being the chain of distribution. In a few instances we sell large retail dealers, chain stores and things like that, direct. Unless the third person I have just referred to had an organization, it would take quite a while for him to create and make this machinery for distribution. There is no trouble to sell tobacco products to jobbers or
4469 to retailers because the sales are absolutely guaranteed. If they don't sell, why, then, the cigarettes are taken up.

I have assumed during my testimony that Liggett & Myers during their long course of business have built up a good name. As to whether they have built up a good will in the sense that good will means satisfied customers who want the Liggett & Myers product, I will say in this
4470 country consumers have not been trained in tobacco products to look for the name of the manufacturer as in
(3589) some other countries, for example, England, and I doubt if there is any large percentage of consumers who know who manufactures a certain product. Our experience, and the tests that we have made have shown that the smallest number know anything about who makes a product.

As to whether that's true of Bull Durham I will say I doubt if there are many consumers who know that that

is owned and controlled by the American Tobacco Company. I don't believe that the consumer in this country is educated to know that in tobacco products, and I am speaking, of course, only of tobacco products. In England it is quite the contrary.

As to whether the dealer is any authority to the consumer as to what he offers, I will say the dealer is some help to the manufacturer, but only to a very limited extent, as they almost universally furnish the consumer what he asks for, and hesitate about offering him any substitute. The consumer knows what he wants to ask for through the sales of the products and the advertising and the promotion work of the manufacturer more than
4471 any other channel.

I should say the users of Chesterfield and Piedmont know only to a very limited extent whose product it is. I am sorry they do not but I don't believe they do. I doubt whether the dealer knows whose products those cigarettes are in a great many instances.

Our name is on every package. The jobber knows of Liggett & Myers Tobacco Company. We have approximately 5500 customers, and of course, have accounts with them and they all know of the company through the ac-
(3590) count. I mean 5500 jobbers. They are authority to the dealers. They sell the retail dealers. We sell the retail dealers for the jobbers. They back up the goods because Liggett & Myers have guaranteed them to them. Frequently though we take up the goods outstanding if they do not sell, or become of an unsalable condition. The dealer or jobber has no doubt that we will take up the goods under the conditions I have named. They know it because we have told them so. They believe what we have told them, I presume, because we have done what every honest man tries to do, fulfilled our obligations.

4472 If the third person I have supposed would embark in the tobacco business under the circumstances stated in connection with him, the jobber would know nothing about him. Liggett & Myers would have an advantage under those circumstances. They had established their reputation for honest dealing, and the other man is unknown, but of course he can establish the same reputation by similar conduct and attention to his business.

4473 That takes time.

There is a good will attached to a continuance of busi-

ness and to the publicity given thereto, if that business has been conducted in the proper way. In other words, I think there is a good reputation. I think there is a good reputation, but not one that can be measured in money value. I know that the term "good will" has become in law to mean something more than merely good reputation. We always carry, though, good will brands trademarked "Good will," meaning by good will the trademarks. We carry the good will on our books, the brands, names and trademarks. We paid actual money for those
4474 determined on the earnings of the brands.

In estimating this value we did not allow some fixed
(3591) return on what may be termed our tangible assets. Our good will, amounting to approximately forty million dollars, was purchased in actual cash based on the earnings of specific brands. That was over and above the tangible assets. The good will was not contingent at all upon the value of the tangible assets. The tangible assets were paid for at the market value at the time they were purchased, or their book value, and the good will of the brands and trade marks were determined by the earnings of the specific brands. A purchaser under those conditions would first want, before he ascertained the total of the two kinds of purchases that he was making, to know
4475 what these values which were included in the term "good will" would yield per annum in money.

I say Liggett & Myers paid for these brands. I mean by that that they bought them. As to whether their cost entered in in any way into their value, I will say each brand was put in at a certain value based on its earnings.

(3592) Friday, October 13, 1922, 9:30 A. M.

4476 (New York City)

CLINTON W. TOMS resumed the stand for further cross-examination by Mr. Aldrich:

Liggett & Myers is not owned and controlled by any other corporation. It has subsidiary companies. The valuation of $40,000,000. was placed on the value of the trade names in November, 1911. That was the time of
4477 dissolution of the American Tobacco Company by decree of court. It is my understanding that the ac-

countants under a decree of court determined the value of the good will at that time. My understanding is that that valuation was placed upon the earnings of the brands over and above the earnings of the tangible assets belonging to the company or taken over by the company. That is, the brands, trademarks and good will was based, according to my understanding, on the earnings of the
4478 brands as per the order of the court. The tangible property, of course, was entirely separate and was paid for separately.

When we establish a new brand, we do not in our inventory or statement assign to it any value. We have not added to the value of the brands, trademarks and good will as established in 1911.

In the event of resale, I should think the values would be attached to such brands, but of course, in determining the values of new brands there would have to be a new or revaluation of the old brands.

At no time in our history did we defer the charge to expense of advertising over a term of years. As to
(3593) whether that was done by many corporations at one
4479 time before the government allowed advertising as an expense. I will say that our advertising at the time that the contract is made for a period, say, of three months, immediately a third of that advertising is charged to the brand, and at the expiration of the advertising contract the total amount has been charged to the brand regardless of the results. When the brand is abandoned, it is not charged to expense. The profits or loss on a brand are taken up monthly, and, of course, if it shows a profit, when, then it is that much profit to the company; the profit on the inividual brand is taken up each month.

We ascertain the profits on Chesterfield by charging in everything,—manufacturing cost, material, selling, advertising expense and salesmen's expenses, and its proportion of overhead. As against that there is credited
4480 the net return on the sales. That same kind of an account is kept up through the years, so that at any given time we can ascertain whether or not any particular brand has been profitable.

As to whether the extent of those profits would increase by the lapse of time if it was successful or ordinarily successful, I will say it does not necessarily follow that the profits would increase. It depends, of course,

upon the sales, and the expense, if I understand you correctly. I should say that the balance in favor of Chesterfield, for instance, its credit balance, would be increased by lapse of time, if it is a successful brand, its total net production to the owners.

I did not come here today with any data concerning the redemptions of which I spoke last night, except that I can state the approximate percentage of redemptions during
(3594) the period that we packed coupons, or from the time that we began to pack coupons.

As to what data we have preserved in our record by which my statements here can be confirmed, I will say I don't think our records would be subject to an examination. The auditors of our company have custody or control of them. We practically destroyed the coupons at the time that they were redeemed. We keep track of the redemptions from month to month by actual count. We
4482 actually counted the coupons which were redeemed, which was necessary, of course, in order to give the proper premium or to pay the cash value, and that was charged against the provision account. So far as our records are retained, they would show either in cash or premiums the amounts paid out. Of course, we don't keep the detailed records, you know, for that length of time. The records would go to some general book or ledger. I could not tell you the quantity of each kind of coupons that was redeemed each month, our records would not show that at this time. The only thing that I can tell you is that, for example, for the years 1912 and 1913, our redemption was between fifty and sixty per cent, that for the years 1914, 1915 and 1916 our redemptions ran between seventy and eighty per cent, and for the year 1918 the redemption was one hundred fifty per cent, and for the year 1919 I think it was over two thousand per cent, but, of course, we had discontinued packing them you see at that time.
4483 Our auditing department would be familiar with the details. I am not familiar as to whether during this period when the redemptions were so high we had credit in our income and excess profits tax therefor. The auditor has charge of that. The 2000 per cent. that I have mentioned with respect to our redemptions was in 1920.
(3955) We had discontinued in 1917. As to how we get 2000 per cent. under those circumstances, I will say that there was a small provision account put up in 1920. That does

not square with the facts. Our records show that there was a small provision account set up in 1920 as against the redemptions, although we discontinued generally the packing of coupons. It might be a certificate in a carton. I am not quite familiar with the details of it.

4484 Our auditing department would be familiar with the details. The assistant auditor who has charge of that is Mr. Ben Carroll of St. Louis. The records show that 2000 per cent. redemptions are in St. Louis at the general offices there. The general books have not been destroyed, so far as I know.

With respect to the general provision set up in 1920, I will say I am not familiar with the details, but it may have been that there was a valuable certificate, that is, a certificate for the retail dealer, or a certificate for the jobber that was equivalent in value to so many coupons, that may have accounted for the small amount which was set up during that year, but as a general proposition we

4485 discontinued the packing of coupons in 1917. There might have been some few that were packed a little later.

The "general provisions set up" is not an estimate of the contingent liability made by the accountants of our house with reference to these outstanding coupons. We set up the whole coupon as fifty cents, and other coupons, coupons of other denominations in the same proportion, a half of the coupon, for example, twenty-five cents; two whole coupons would be set up as a dollar. That was considered the value. If it was cash value, a whole coupon

(3596) had a value of fifty cents a hundred or half cent.

When I used the expression "fifty cents" and "twenty-five cents" I meant a quarter of a cent and a half a cent. The coupons were not twenty-five or fifty cents apiece,

4486 but I am referring all the time to a hundred coupons, or rather, one cent, or a quarter of a cent.

In stating the number of coupons issued in my testimony yesterday, I was dealing with them by the number of whole coupons, not by the hundred.

As to what I meant by setting up a provision for these coupons, I will say if we packed a hundred whole coupons in a brand, we would immediately set up a provision for fifty cents to take care of the redemption of those coupons. As to when, if at all, we ever charged off or made a counter entry as against the amount set up for the coupons, I will say that would be a certain periods when

it seemed to be perfectly safe to charge into profits a certain number. I am not familiar with the details covering the number of years as to when that was done. Our books would show that branch of the question. They are in charge of Mr. Carroll at St. Louis.

4487 I will explain how it would be possible to deal with 2000 per cent. redemptions in 1920. That would occur, for example, if we set up in our books as a provision account a thousand dollars in 1920 and the redemptions, say, were two thousand times that, or whatever amount that was,—it might be a very large figure. If you would call for, for example, 1921, when we did not have any provision account and yet were paying for the coupons outstanding.

(3597) I simply use two thousand per cent because it looks as if it was approximately that amount. It was a very small provision set up and a considerable quantity redeemed.

I have already testified to seventy or eighty per cent of redemptions, of the total, that we packed during that period. I said paid. I gave the years. We started at forty and fifty, and then from seventy to eighty per cent. Then, of course, as we made less provision, and there

4488 was more redemptions, why, then, the percentage was necessarily higher. That is, if there were no coupons packed. Provision is based entirely upon the coupons that are issued. I used the term "issued" and "provision" to mean the same. Of course, provision is the general word used by us, but it really means issued, if you prefer that word. I testified that when a thousand dollars worth of coupons had been packed with certain articles that the books were so kept as to show the liability for that thousand dollars. That was set up as a liability of the company at the time of the packing and the issue of the coupons. In other words, it is put into the liabilities of the company. It is an obligation the company has to meet. Then, as redemptions are made the liabilities

4489 are decreased on our books to the extent of such redemptions. From year to year, we continued to carry the redeemed coupons as a libility. I should not say that the entire amount to the credit of the provision account was carried as a liability. It might have been that at the end of the year a percentage of it was transferred to profits. Our general books show the amount that was transferred to profits at the end of each year. If later it happened

(3598) that the redemptions of coupons required an amount in excess of what remained, we would have to set up something for that purpose. In other words, we would have to meet the obligation . That would require the setting up of a Provision for that purpose, if the provision already set up was not sufficient to take care of it. We were, however, always conservative in handling that and realized that the obligation was outstanding.

4490 There may have been some carton certificates, or something, after 1917.

I will explain about how the redemptions could be two thousand per cent. If in 1920 we packed, for example, carton certificates, or something of value, in one of our brands, we would immediately set up a provision account for the value of what was issued. Those specific coupons or certificates might not be redeemed during

4491 1920, but as against that provision account there is a redemption of coupons which is not separated as to the character of the coupons, for previous year, and therefore the total amount which we paid out for coupons in 1920 might be five thousand times an amount that we had set up, taking the whole coupons, and I am dealing with it as a whole, and not as specific coupons, because no one in our organization could give you information as to the redemption of specific coupons.

I will explain as to what I applied the term "two thousand per cent". That means the quantity that we paid for the redemption of coupons was two thousand per cent over and above the amount that we set up as a provision, or that we issued during that specific year, but not two thousand per cent of what was actually—of the actual individual coupons packed that year, but of the total

(3599) quantity that was sent back to us of all coupons which

4492 had been issued, so that if we had only issued that year a thousand dollars worth of coupons, then by reason of the redemption of coupons from prior years which had not been redeemed, together with the coupons issued that year, our redemptions were two thousand times what we had issued that year. For example, I recall that after we discontinued packing coupons, my recollection is that in one year, for example, there were thirteen thousand dollars in a provision account and we might have redeemed three or four thousand dollars.

4493 I think my company on general principles would object

to allowing the Larson Company's accountants to examine this account. I came here at the request of these people simply to give my individual opinion based upon our experience, and I think it would hardly be necessary, or quite fair, to have our company's records brought into this. We would not be willing to go beyond my personal testimony which is based on the experience that I have had with the company. I don't think that we could even consent for the auditors of our company, or any one else, to enter in. I am simply, the best I can, wishing to express an opinion based on my experience in handling this, and aside from that our company would not care to enter into it.

4494 I should say ordinarily institutional advertising meant the advertising of firm names. I am familiar with the fact that often in the prior history of the establishment of individual brands the infringers have succeeded, 4495 through some objection to the brand that was descriptive or geographical, or otherwise, in defeating the brand, even after much money had been expended thereon. I don't know that large advertisers of the country have in (3600) a large number of instances made prominent the name of the firm or corporation having the brand. I recall Arbuckle's coffee, for example. That's his own name, but I cannot say to what extent that has been done.

I am familiar with Heinz' 57 Varieties, and Ingersoll's Watches. I know of the Studebaker car. I recall they used the word Studebaker, seeking thereby to transfer from a wagon business to an automobile business, keeping the name. In many instances, I should say a change of that kind has had in it a protective reason, whereby persons have put forward their names in order to protect their brands. Of course, that is usually done in a trademark or registered article in order to make sure as to the ownership. "Liggett & Myers' Every Day Smoke", for example, is a trade mark article in a certain package, in a certain wrapper, and its value is protected by that means.

My attention being drawn to the name "Wrigley's" alone in the advertisement at page 1053 of the Record, I will say if a manufacturer markets a specific definite trademark, registered trademark, then I think that he 4497 should advertise that trademark, using his name to whatever prominence he thinks best, no fixed rule so far

as I can say about it. For example, a company might or might not use its name in connection with a trademark article. In other words, a trademark article would appear to me to have to be handled in a different way from an automobile, for example. For example, Ford. Whenever you see "Ford" that means a car, that means the name of his car, but if he had some registered trademark article, why, I think he should advertise that rather than
(3601) to advertise Ford.

If we do not confine ourselves to registered articles, and if the dealer or manufacturer is putting out food products or chewing gum, under specific brands or names which he has assigned to it, some of which could not be exclusive like Spearmint, for instance, I have said that could not be charged to anything other than general ex-
4498 penses unless it was coupled with a specific brand. I don't think the advertising of a mere name, without reference to the individual product, is of value. And if some one should advertise just his individual name, I don't know that that would be—I don't know what benefit he would derive from it, unless it was for a specific product, for example. I hardly think it would be institutional advertising, even though we mentioned a product. For example, What he is trying to do is to sell his product, his advertised product, and not sell his name. That really does not mean anything unless it is coupled and identified with a product. For example, if we were to advertise Liggett & Myers Tobacco Company, I don't know that we would sell any Fatima cigarettes, Chesterfield cigarettes or Piedmont cigarettes, or Horse Shoe tobacco by that line. We have to couple it, in my opinion, with the product, that specific product that is offered for sale.

4499 I should say that an advertisement of Liggett & Myers in prominent type, giving great prominence to the fact that they were tobacco dealers, would not be institutional advertising if there is on the advertisement the name of one or more of its products. I would say it was attempting to sell the product if it was advertised in connection
(3602) with the name. I should say the effect of it would be to make the name prominent and make it stand for that kind of products. As to whether that does not make it institutional if it has that effect, giving prominence to the firm name, I would say yes.

4500 I presume the advertisement "Tiffany & Company,

Jewelers", such as we see in our periodicals, would be construed as institutional advertising.

Referring to the package of matches which Mr. Aldrich just handed to me, and which contains the word "Wrigley's" without stating what the word "Wrigley's"

4501 refers to—as to whether that is institutional advertising, I will say I think that any other man named Wrigley could come and say exactly the same thing. If your name was Wrigley, I should think you could get out an advertisement exactly like that and not be an infringer on anybody or anything. It does not say what it is or anything about it. Of course, we know from reading other advertisements that probably it refers to chewing gum, but a man that did not know that from the advertising of the brands would not have any right to know it, as Jim Wrigley, or anybody else, could come along and say "Wrigley's", that might mean Jim or might mean Harry or might mean anything, but I don't know just what is intended to be the effect of that advertising. The parallel probably would be if we would have a match wrapper printed "Liggett & Myers Tobacco Co., a Lasting Chew." If a fellow picks that up, he will say: "Well, what does that mean? Is that fine cut tobacco, long cut tobacco, or chewing tobacco? Is it tobacco? I presume it is tobacco because the word 'tobacco' appears in the name of the firm." But I don't see how it would be any great bene-

(3603) fit to Liggett & Myers Tobacco Company, it would not increase the value of their business it does not seem to me.

4502 It is an advantage to a firm to have its name very familiar throughout the country and the buying public, but as I tried to explain yesterday that my experience, and of course what I say is based entirely on my experience—is not so much as to the name of the manufacturer, but what they want is the character of the product, the meritoriousness, its price, taste, and so forth. As to who makes it, I don't think but a very small per cent of them have any knowledge although we try almost invariably to put our name on every product because we think it adds sincerity to the advertisement. It is a stronger advertisement, you might say, in that it gives strength to it and gives force to it, just like a statement that a man made: if he signed his name to it, I think it would be a more forceful statement.

I stated yesterday that a business house, like a person, acquires character through a long term of years, but is
4503 something difficult to estimate commercially. The financial value of the good will might be changed, of the Liggett & Myers Tobacco Company, for example. Today they might have credit and standing and might have a reputation of being honest. If that ownership changes, that does not mean that we have the same credit. The banks say "No, that's a different concern." The same name, yes, but not the same firm, not the same plant. Customers who came might say, "Well, I dealt with the old Liggett & Myers Tobacco Company, but they were one kind of fellow, and this is different." The same name, yes. So that, to determine the value of it commer-
(3604) cially, or to finance the value of it, would seem to me to be quite a different proposition. Jones & Smith, for example, have a business and they sell out Jones & Smith's business, and some other people get it. The personal element is gone, the financial standing may be gone. So it is difficult to say just what is the value of that. Frankly, I don't know. I was trying to express an opinion as to the value of institutional advertising as it is usually understood, and the net results obtained from it.
4504 I would say that the package of matches to which Mr. Aldrich has referred was intended to be an institutional advertisement.

(Mr. Aldrich then offered in evidence the piece of cardboard, being the package without the matches attached thereto concerning which the witness had just testified. The cardboard was received in evidence and marked Larson Exhibit 156.)

4504 Said Larson Exhibit 156, with the immaterial parts omitted, contains merely the following: "Wrigley's After every meal is food for you Wrigley's".

(3605) When I referred to the personnel of a firm changing,
4505 I meant only to say that the mere fact that persons had the same name did not mean that they had the same character and the same financial standing. I know nothing about the management of the Wrigley Company, its present or future prospects. A change in the personnel or management would not necessarily be reflected much quicker in the banks than it would in the buying public. I do not assume that the new men coming in under the circumstances I have named would at once change the

product so that the good character of the product, association or name would likewise be immediately changed.
4506 As to whether if the product remained the same, the buying public in other parts of the country would have any concern with the change in the personnel of the management, I will say, not the buying public. It would depend entirely upon the character of their business to what extent the personal element entered into it. For example, here is a salesman that has been representing the firm for a long number of years and he has established a personnel, he has a following. That firm changes, or the salesman changes, or something changes, and some other man comes along. That man may not be able to hold that personal following. Of course, those elements entering into the thing to a greater or less degree depend entirely upon the character of the business and location of the business and facilities, and I should say a great many things quite appreciably enter into it.

I have no definite knowledge that these advertising campaigns have been carried on at such expense that
(3606) people generally using or receiving it, like Larson Exhibit 156, know that it is gum that is referred to to be used after each meal, but I presume that would be the
4507 effect of it. That would be my opinion, if it was carried out sufficiently, but I, of course, have no information about it.

BENSON H. ROWLEY, called as a witness on behalf of Wm. Wrigley Jr. Company, being duly sworn, testified as follows, on direct examination by Mr. Mayer:

My name is Benson H. Rowley. I live in Newark, New Jersey. I have lived there five years. I am advertising manager of the Joseph Dixon Crucible Company, Jersey City. That concern is engaged in the manufacture
4508 of various products in which graphite is a part. That includes pencils, various kinds of lubricants, paints and crucibles. I believe, off hand, they are incorporated at $5,000,000. I should imagine our gross sales when business was what it ought to be ran around from eight to ten million dollars a year. That is an approximate figure you will understand.

So far as the ramifications of the business are con-

cerned, in the first place there is hardly any one who does not use a pencil, so in that way we cover not only all of the United States, but also various foreign countries. Our lubricants are used by railroads and various other industrial concerns, such as an ordinary factory, various
(3607) types of mines, coal mines, gold mines and so forth.
4509 Paint which is used in the protection of structural steel, such as the building being put up here (indicating building across street under construction) carries our paint on it, smoke stacks and water tanks and other types of metal that are exposed to the elements; and crucibles are sold only to a few people because there are only approximately about 6,000 foundries in the country and crucibles are used for the melting of metals. So far as the extent of our business is concerned in pencils there is practically no limit to it at all.

All our products are sold throughout the United States and also in various foreign countries where we happen to have a representative at the time.

My company advertises. It does newspaper advertising. They have advertised, to the best of my personal knowledge, for 10 years and my recollection goes back for a number of years back of that, probably back to way past 1890 that I have personally examined records.
4510 The media used by my company for advertising purposes are magazines, newspapers, various forms of bulletins, so-called, display cards, posters, and whatever advertising you could get by word of mouth from satisfield customers.

Our advertising of the general types that I have described has been of a national character. We have advertised in the Saturday Evening Post and Literary Digest, which are considered national publications, and in newspapers which we have picked out in various towns located throughout the United States. We have also done a great deal of what we call technical trade advertising in publications that are strictly devoted to a certain industry, such as Coal Mining or Engineering News Record which is devoted to the construction of buildings, bridges
(3608) and things of that kind. Of course, those publications are not in a sense considered national advertising, but they really are because they do cover the whole country.

As manager of the advertising of the Joseph Dixon Crucible Company, it has been part of my business to

determine how the expense of the advertising should be charged.

4511 Previous to my connection with Dixon, which has been for 5 years, I was with N. W. Ayer & Son of Philadelphia for 5 years prior to that. N. W. Ayer & Son are generally accepted as the largest advertising agency in the United States. They plan and place the advertising for numerous concerns, including the National Biscuit, R. J. Reynolds, Western Electric, American Telegraph and Telephone, and many other concerns of smaller size. As I say, they take the account from the very beginning, from the first intimation that a concern says that they want to advertise, and plan how much they should do, where they should do it, how they should do it, and write all the copy and everything in that connection.

If such an agency did not see that the advertising resulted in profits for the product advertised, they would probably not have the business for the next year. They usually study the question of how to allocate or distribute the cost of the advertising with respect to the particular product advertised, and they usually make

4512 suggestions. Of course, they are only suggestions, because they will not be taken by any concern unless they want to take the same, the same as a lawyers advice would be.

I have a sample of one of the Joseph Dixon Crucible

(3609) Company's advertisements before me. It is a proof of an advertisement that was used in The Foundry sometime during this particular year. The Foundry is a publication devoted to the interests of the foundry trade in the United States. I had charge of getting up that advertisement and its publication. That advertisement refers exclusively to Dixon's Graphite Facings. The first word on it and the most conspicuous part of the printed matter is the word "Dixon's". It also has the name of our company in conspicuous type "Joseph Dixon Crucible Company".

4513 (Mr. Mayer asked the witness how the expense of that advertisement was charged. Mr. Aldrich objected, on the ground of immateriality and irrelevancy, and on the ground that it had no bearing on the present case. The objection was overruled.)

That expense was charged entirely to facings.

(Mr. Mayer than offered the said advertisement in

evidence. Mr. Aldrich objected. The objection was overruled.

The said advertisement so offered in evidence was received in evidence and marked Wrigley Exhibit 22.)

4514 (Wrigley Exhibit 22).

(3610) The master stated that it was understood that the
4515 objection made by Mr. Aldrich stood as to all questions along that line.)

I brought here other illustrations of my company's advertisements. The one which I now have before me is an advertisement we had in a publication called "The Coal Age". I recognize it because it was taken from my own personal proof book. I just don't remember when the advertisement was inserted, it was probably last year, or the year before.

4516 We charged 50% of that advertisement to grease and 50% to paint.

(Mr. Mayer offered in evidence the said advertisement of Joseph Dixon Crucible Company. It was received in evidence and marked Wrigley Exhibit 23.)

4517 (Wrigley Exhibit 23.)

(3611) Here is a proof of one of my company's advertise-
4518 ments from "Gas Age-Record". That must have been in 1921. That was an advertisement that emanated from me. The expense of that advertisement was charged entirely to paint.

(Mr. Mayer offered the said advertisement advertising paint in evidence. It was received in evidence and marked Wrigley Exhibit 24.)

4519 (Wrigley Exhibit 24.)

(3612) Those three advertisements I have produced here
4520 were distributed throughout the United States very extensively in their respective fields. You see each one represents three different classes of industry. Those three advertisements are typical in general appearance and make up of the advertisements that my company has been publishing. That is true with respect to the entire period that I have been connected with the Crucible Company.

Based on my experience, in my opinion, the proper method of allocating or distributing the charge of an advertisement of one or more products of a manufacturer where that constitutes less than all the products that he deals in, is to measure the space devoted to those prod-

ucts and divide the cost of the entire publication pro rata according to the space devoted to the various products. The amount so ascertained I would charge against the products illustrated or specified in the particular advertisement.

4521 In my opinion, no charge should be made because of the use of the name or the prominence of the name of a manufacturer to anything than the specified products named in the advertisement.

With respect to the time we charge the expense incurred for those advertisements, or as to whether we carry them as an asset or a deferred asset, I will say as soon as the bill comes in from the publication we charge it through on our records and pass it over to the accounting department, who immediately charge it on their records to whatever product we have personally specified. No amount has been charged on account of any of these advertisements of my company to good will. In my opinion, nothing should be charged to good will because of advertisements of the type that I have brought here.

(3613) As to the suggestion that a proper way to distribute the cost of advertising one or more specific products, but less than all of the manufacturer's products, is to distribute on the basis of the sales of the specific product, I will say I don't believe they should be distributed against the sales. That is because your proportion may

4522 be out of all relevance to the subject. You may not sell any goods. You may advertise a hundred thousand dollars worth and not sell a penny's worth, and the proper way is to charge it against your product in the amount of space that you have devoted to that product and not to the amount of sales you have had on the product.

I understand that I am giving testimony in a case in which the Wm. Wrigley Jr. Company has been found by the court to have improperly copied a color scheme belonging to the Larson Company and to have sold Wrigley's Doublemint gum in packages containing such an infringing color scheme, and that the court has enjoined the Wrigley Company from further using that color of package, the Wrigley Company, however, continuing to sell Doublemint, Wrigley's Doublemint, but in a different colored package.

4523 I also understand that the court has directed the Wrig-

ley Company to account for the profits which it made from the sale of its Doublemint gum in its infringing package during a certain period. I also understand that the effort is now being made before Master Morrison to determine what those profits have been and to ascertain what is a fair, just and equitable way to distribute the expense of advertising in order to ascertain what profits should be paid to the innocent party, or the real owner of the color scheme, in this case Larson.

In my opinion, the proper method of determining how
(3614) the expense of advertising should be charged in that kind of a case, is to get all the advertisements that have been published together with the charges for the same and sit down and figure out the amount of space. Where an advertisement has had more than one product in it the
4524 amount of space to go to each product and charge the cost of that advertisement up in proportion to the amount of space occupied by the one or more products. The amount so ascertained should be charged up to the advertising for those particular gums. For instance, if there were three gums advertised, Jucy Fruit, Doublemint and Spearmint, and they all occupied the same general amount of space, why, I would charge up 33-1/3% of the total cost to each of the three gums.

I would not make any distinction in that kind of a case between the amount paid out for advertising, we will say Wrigley's Doublemint gum on painted walls, or electric signs, or newspaper advertising, and hiring someone to go out and sell Wrigley's Doublemint gum, because the advertising in publications and on billboards, and so forth, is simply a silent salesman.

As to the effect of spending a given sum of money advertising a given product, and then stopping that advertising of that product, I will say that in a short time after stopping your advertising your sales will begin to show evidence of your lack of advertising. It is very hard to estimate exactly how long that would be.
4525 It depends entirely upon what your product would be and how successfully you have advertised it before.

I have examined the seven advertising books which have been offered in evidence in this case as Larson Exhibits 30 to 36 inclusive, so far as they cover the advertisements of Wm. Wrigley Jr. Company from July 28, 1914, to November 12, 1918.

(3615) Referring to Larson Exhibit 37, if the Court desires
4526 to ascertain what is the just and equitable way to determine what profits the Wrigley Company ought to pay over to Larson in the case supposed, in my opinion the cost of that advertisement should be charged as follows: I would measure the space devoted to the Doublemint and the space devoted to this little one of Spearmint in the lower right hand corner of the ad, and divide the cost of this billboard in the same proportion as the space devoted to Doublemint bears to Spearmint. I would charge the result, the one for Doublemint to Doublemint expense, and the one for Spearmint to Spearmint selling expense.
4527 I think the last line which reads "Made by the makers of the famous Wrigley's Spearmint" on that advertisement should be charged to Spearmint because in my opinion it is advertising Spearmint. For instance, there may be some people who would be a little skeptical about trying a new gum, but yet had to be reminded of Spearmint, and seeing the name Spearmint on this billboard would remind them, perhaps, that they had not had any Spearmint today, or for two days, or a week, and would go out and purchase a package of the same.

As to the suggestion that that line is merely a means of advertising Doublemint, that Spearmint has already been made famous, and therefore the Doublemint may be relied upon as being a good product because it is made by the makers of the famous Spearmint, I will say there may be some people who do not like Spearmint gum, and
4528 it would react the other way, because they did not like Spearmint they would not have anything to do with Doublemint.

(Mr. Mayer then told the witness that he should assume in each instance where his opinion is being asked
(3616) it was being asked upon the supposition it is being applied in a case where it was sought to ascertain what profits should be paid to a third party. Mr. Mayer further stated that he was not inquiring merely as to interdepartmental rulings, or as to how charges should be made on books for that purpose, but as to how the charges should be distributed where the profits belonged to an outsider.

Looking at Larson Exhibit 38, I would apply the same formula again in charging the expense of that. Without accurately measuring the logo-type reading "Wrigley's

4529 Spearmint," I would say that Wrigley's Doublemint package is at least 20 times larger, so I would therefore charge 1/21st to Wrigley's Spearmint and 20/21st to Wrigley's Doublemint. In order to ascertain the profits, I would measure very carefully.

In determining how much of an advertisement of the type that I have seen refers to Spearmint and how much of the advertisement refers to Doublemint, I would take an actual measurement of the Doublemint package and of the language pertaining to Doublemint and also an actual measurement of the Spearmint package, or logotype, and of the language pertaining to Spearmint, and find the proportions accordingly, provided that the language applied absolutely to one product alone, either to the Spearmint or to the Doublemint, but could not be construed to apply to both of them. If I found language in an advertisement having reference only to one product, I would measure that space and charge it to that
4530 particular product. That is my formula, where it be in words or pictures of packages.

(3617) Taking Larson Exhibit 46, I will state how, in my opinion, the cost of that sheet should be distributed. We have two illustrations of Spearmint and one illustration of Doublemint. The text as I read it applies equally as well to Spearmint as it does to Doublemint, therefore the distribution of the charges would be on the basis of the illustrations. I would accept this small Wrigley's Spearmint illustration in the girls' hands as unit one, and I would figure then that the other larger illustrations of Spearmint are approximately four times as large, and the same is true of Doublemint. That would divide the charge into nine parts, 4/9ths of the advertisement would be charged to Wrigley's Doublemint and 5/9ths to Wrigley's Spearmint.

I am assuming that the Wrigley's Spearmint package and the Wrigley's Doublemint package are the same size.
4531 And I have also assumed that the Wrigley's Spearmint package in the girl's hands is one-fourth of the Wrigley's Doublemint package but I would take an actual measurement to determine what the profits should be.

Cross-Examination by Mr. Aldrich.

In the samples of the advertising of the Joseph Dixon Crucible Company which I have produced here, we have not a particular trade name for our graphite facings. Our facings are made of graphite and we have therefore given them the name of the material of which they are composed. In the same sense, we have no particular name for our paints or grease. We have various kinds of waterproof grease to which we attach descriptive names of the uses to which they are devoted.

(3618) In this advertisement, we are not seeking to build up 4532 trade names, but what we are seeking to do is to sell those products regardless of what they are called.

"Dixon's Silica Graphite Paint" is intended to show the ingredients in the paint.

I have had something to do with advertising where the purpose of the advertising was to build up trade names for the products, like Chesterfield and Piedmont. In fact, in our own organization some of our pencils are trademarked by a brand. Such advertising tends to make the product known by the name which we choose to advertise. I am acquainted with advertising where by reason thereof such trade names have become widely known. Some instances are "Uneeda Biscuit" by the National Biscuit Company; "Campbell cigarettes" by R. J. Reynolds "Prince Albert" by R. J. Reynolds. That is also true of "Bull Durham" tobacco, "Piedmont cigarettes," "Chesterfield cigarettes" and so forth. Those names in 4534 my experience as an advertiser have become so widely known that they have, for the particular article, a clientele who seeks that product, for instance, who wish to smoke Piedmont cigarettes.

Any advertised trade-mark name can build up a clientele for itself. The purpose of such advertising of trademarks or trade names is in order to protect one's self and one's product from infringement by another person or persons. It has a further purpose of establishing a clientele and furthering the sales, furthering your own products and organization.

I know of instances as an advertising man where such a trade name has attained great value. The Uneeda Biscuit name, I understand, has attained great value. I

mean by that a large amount of advertising devoted to the exploitation of the name of a product, if the result
(3619) of the advertising succeeds in making large sales for it, establishes a value.

4535 I should think the name "Doublemint" was of value, if approximately $2,900,000 was expended in advertising the name "Doublemint" during the infringing period extending over approximately 4-1/2 years, and resulting in the sale of Doublemint during the infringing period to the extent of approximately $8,500,000.

I should think it was a valuable name. I have had no personal experience of any case where the advertiser started out with the expectation and actually did, during a period of exploitation, spend more money than he made for the purpose of establishing such a name. I have
4536 heard of such cases, or I have heard of where the relation of advertising expense has been extremely high. And in some cases it is productive of results, and in some cases not. Of course, whether it is productive of results or not depends not only on the advertising, but it depends on the product. If the product is not right, all the advertising in the world won't put it across. Not only will it not have a temporary success. It won't have any success at all. I mean by that that the advertised product must be a good product, and the people or firm advertising that must keep their promises, and treat their customers so that they are satisfied to deal with the firm. In other words, that a firm or manufacturing institution acquires character, just as an individual does, by its conduct. Sometimes it is good, and sometimes it is bad.

4537 (Mr. Aldrich then told the witness that he should assume in each question asked by Mr. Aldrich there was embraced the idea that the manufacturer does so conduct
(3620) its or his business, as to have a good product and a satisfied customer.)

As to what I understand by institutional advertising, I will say that institutional advertising is a type that was prevalent a few years back when most concerns had more business than they could take care of, more orders in their factories than they could put out. They did not want more orders, so they advertised in a way that was called institutional advertising. This institutional advertising was not, as a rule, specific, frequently it did not refer to specific products, and never that I know of did it have any

sales arguments in the various advertisements. They were simply designed to create, you might say, good will for the house in general, and as such, I think, most people did that type of advertising. They did not look for results from the advertising, in fact they did not want results.

4538 I should say in order to define it, institutional advertising is that type of advertising which endeavors to create good will for the house so advertising and not to create direct sales or immediate sales.

As to whether by my reference to "a few years ago" I meant that during the war period and subsequently the income and excess profits tax, when the houses or manufacturers had many orders and the Government allowed them to deduct their advertising expenses, that manufacturers quite generally, or in many instances at least, decided to expend large or considerable sums in advertising, hoping for subsequent benefit therefrom, rather than to retain the money and to pay taxes to the Government, I will say personally I don't believe the majority of manu-

(3621) facturers did it on that basis. Some of them may

4539 have. It was during that period that this type of advertising was done, but I attribute that type of advertising not as a desire on the part of manufacturers to evade the income and excess profits tax, but simply a case of where they had more business in their plant than they knew what to do with, and they knew if they stopped advertising people would be very liable to forget their particular product, so they just simply endeavored to go along and create good will for the concern, but not create any orders. The consequence was that they adopted a form of advertising which gave prominence to the name of the firm or corporation. As to whether they mentioned any products, or just a few products, not seeking orders, I will say that they may have listed some. I have seen some advertising where no products were named. That, I think, depends upon the concern and upon the particular advertisement.

Generally speaking, institutional advertising—the accepted definition of institutional advertising among advertising men I should say includes advertisements which put particular emphasis on the name of the firm as distinguished from the products of the firm, if the products

4540 are simply mentioned in a casual way, such as "We make" so and so.

At the present time, I think the most shining example of institutional advertising is the advertising done by the American Telephone and Telegraph Company. I remember a few years ago, during this same period, the United States Rubber Company did some institutional advertising and that is about all I recall. I should say Heinz's 57 Varieties is institutional advertising.

I am not acquainted with the advertising done by the
4541 Studebaker Corporation of South Bend at that time. I
(3622) recall some ads that they have used where they have shown a number of their different factories, and things like that. As far as I can remember, I should say that was institutional advertising.

I don't recall ever having read anything in the literature on advertising or accounting which cites the Heinz and Studebaker advertising as the best examples of institutional advertising in this country.

There are other large manufacturers of pencils. I presume that our pencils are generally known as "Dixon's
4542 pencils." But if a person would go into a store and ask for a "Dixon pencil" it would have to be further specified, because there is no such thing as a pencil by that name. It is either "Dixon's El Dorado" or "Dixon's Ticonderoga" or "Dixon's Anglo Saxon" pencil or "Dixon's" some specific trade name pencil.

You would not have necessarily to tell the salesman in the store what kind of a pencil you wanted, whether hard or soft,—assuming we are talking about a half way decent pencil. The ordinary lead pencil is made in four degrees of hardness, it may be one, two, three or four. Some, for instance, we will say a Ticonderoga, are made in five degrees—that is one of our cheap pencils or middle pencil. Now, there is another pencil called "Cabinet" it is hard in three or four degrees of hardness and he might go into a dealer and say: "I want a Dixon pencil" and the dealer would say "What kind?" The customer would
4543 say, "Well, I want a soft one" or "a hard one", and then the dealer might hand him out any one of a number of different grades, or the dealer might say, "Well, I have a Ticonderoga", or "Anglo Saxon", or some other specific name, "and I have the hard and soft," and the

customer would say, "All right. Give me a Ticonderoga, give me a Number 2."

(3623) Generally speaking, I should say we have always made the word "Dixon" or "Dixon's" prominent in connection with our products. We have sought by the character of our product to make people desire the Dixon's products in their several lines. In other words, we have sought to have the name "Dixon's" as connected with our products constitute an assurance to the user or purchaser that they have got a certain quality by buying Dixon's.

I have seen the recent advertisements of the Wahl Pencil and Pen Company that deal in the kind of pencil
4544 Mr. Aldrich now shows me. That has made the name of Wahl well known in connection with this kind of pen or pencil, with the people in the trade, but perhaps other people may not know that Wahl makes the Eversharp pencil. They know it as "Eversharp."

I know that the Wahl Company in its advertisements is carrying on quite an extensive advertising campaign at the present time and associates the name of Wahl with their products. They have been forced to, I presume, by the number of other similar pencils brought out. As to whether our company sells at retail, I will say that depends somewhat upon the product. In our pencils, we do not. In our crucibles I should say that we do, but it is not retail because there is no— We would for instance, sell directly from our plant to a large foundry. There is no one in between, there is no jobber, there is no dealer in between, but with pencils, which are probably the one article which we make which has the largest general consumers demand, we do not.

4545 *Redirect Examination by Mr. Mayer.*

In the sense that I have been using it, the good will of a business would mean the opinion that various persons
(3624) had, either consumers or dealers, jobbers, or any one who had a contact in a business way with this concern, and their opinion of this concern. If that opinion is unfavorable, I would not value that good will. Good will would be created by the excellence of a concern's products, their fair dealings with their customers all down the line. If my concern advertised a specific product, a

specific lead pencil under our name, Dixon's Ticonderoga, that would tend to increase the sale of Dixon's Ticonderoga pencil. If those pencils did not stand use, but were brittle and broke, it would not in my opinion create a good will or anything of value to the institution. I had in mind that the product and the distribution and everything else were satisfactory.

4546 Another of our pencils besides Ticonderoga of the same class is Anglo Saxon. Speaking generally, they are substantially of the same weight and about the same softness and used for the same purpose and by the same class of persons. The person who went into a stationery store and bought a Ticonderoga pencil because he wanted a
4547 pencil would have that want filled and would not be likely to buy an Anglo Saxon pencil unless he wanted two pencils. If we advertised "Dixon's Ticonderoga" pencil, making no reference to Anglo Saxon pencils or to any other grade of any of our other pencils, I would expect that advertisement to help the sale of Ticonderoga pencils. As to what effect it would have on the sales of our non-advertised pencils, it would be very liable to detract from the sales and we would interest people who were users of Anglo Saxon pencils, we would interest them in Ticonderoga pencils by means of our advertising. In other words, where we have pencils that supply similar wants, they are in a measure in competition with each other.

(3625) I should say the same thing would be true as to the Wrigley Company advertising Wrigley's Spearmint gum, and that such advertisement would tend to decrease the sales of Wrigley's non-advertised product.

4548 *Recross-Examination by Mr. Aldrich.*

I understand that Wrigley's Spearmint gum and Wrigley's other gums have different flavors. If a gum chewing person did not like Spearmint, I do not believe the advertising of Spearmint would lead such a person to give up a flavor entirely which he did like. The advertising might get him to try it once, but if he did not like it that once all the advertising in the world would not sell him. If Piedmont and Chesterfield were of somewhat different flavor and tobacco, and the advertising of either brand has established a clientele for that brand, I do not

think the advertising of Chesterfield would lead the users
4549 of Piedmont to give that up to more than try Chesterfield, providing they are always in a position to buy either one or the other.

The purpose of advertising is not to compete with ourselves as between our Anglo Saxon and Ticonderoga pencils, but to get a new customer and increase the use of our pencils, of whatever class we make.

Redirect Examination by Mr. Lane.

If a man had been using the Piedmont cigarettes for a period of fifteen years and he liked them very well, and an advertising campaign comes along showing Chesterfield cigarettes, and he takes one of the Chesterfields and
(3626) smokes it and likes it better than he had the previous brand which he had been using for fifteen years, that would be a very successful campaign, and the smoker
4550 would, no doubt, continue to smoke Chesterfields providing they maintained the same quality as in the first package. The other brand previously used would lose a customer.

4551 Monday, October 16, 1922, 10:30 A. M.

(Hotel Belmont, New York City.)

ALFRED C. MACE JR., called as a witness on behalf of the Wm. Wrigley Jr. Company, being first duly sworn, testified as follows on direct examination by Mr. Mayer:

My name is Alfred C. Mace, Jr. I live at White Plains, New York. I have lived in or near New York since 1909. At present I am advertising manager of the National Biscuit Company. I have been connected with that institution in various ways since 1902. I first started as an
4552 artist. I was assistant advertising manager from 1905 to 1909. Then I was brought to New York and became advertising manager. I occupied that position since 1909. For a few months I was the sales manager of the organization. I do not know whether that means anything or not. I gave that up a year ago last April, 1921, and took it the previous September 1st.

The National Biscuit Company is engaged in manufacturing and distributing and selling of biscuits, crackers, cakes, wafers and kindred lines. We also have several
(3627) bread bakeries. Our general offices are in New York
4553 City. We have over 200 branches all in the United States. We have 28 factories making biscuits and about 7 making bread. A great many of them are located in the principal cities of the United States. We have three or four small places, which we have had, like a little one up
4554 in Burlington, Vermont. Eliminating the small places where we have factories, I should say we have factories in the principal cities east of the Rockies. We have only one factory south of the Mason and Dixon Line, that's in Houston, Texas, so they are all located, you might say, north of the Mason and Dixon Line and east of the Rocky Mountains.

We have done the last two or three years, I should say roughly speaking, a hundred millions. Going back over 10 years, I think I can safely say we would average over forty million dollars business a year. Our product is distributed throughout the United States and has been during the entire time I have been connected with the company.

4555 I can say that we have used all standard mediums of advertising at various times and sometimes used all of them at one time. We have had experience in every method. I call standard mediums newspapers, magazines, periodicals, postings on walls, whether on the inside or outside paint work, electric signs and so forth. I class that as a part of the outside mediums, and also painting on walls, and also the paint on the paper posters or paint on regular boards.

Our advertising has not been limited to one city or one state. We have done lots of local advertising for local
4556 purposes, but we have endeavored to keep our advertising nationalized, that is to say, national advertising, to reach from coast to coast, and I think I can say we have
(3628) done that every year we have been advertising.

During the time I have been with the National Biscuit Company, I would say its advertising has averaged as much as a million dollars a year on an average. I have always distributed or allocated the cost of this advertising so far as my department goes. Of course, what book-

keeping our company does, that would be outside of my line.

So far as my department goes, I have always charged
4557 the advertising to the product that was advertised. As to whether we at times advertise more than one product but less than all the products that we dealt in, I would say that has been continual. We have been in the habit of advertising in one advertisement, or in the same advertisement, two or more products, but not all of the products that we deal in.

(Mr. Mayer then asked the witness as to how the expense of such advertisement ought to be distributed in order to determine the actual cost or the actual profits of those advertised products. Mr. Aldrich objected on the same grounds as he had theretofore objected to similar testimony. The objection was overruled. The master stated that the objection might apply to all questions along the same line put to the witness.)

I would always take the space the various products advertised, whether in illustration or reading matter, and divide up in a proportionate manner as near as I could. I would always charge the expense of the products named in the advertisement and the amount to be charged
(3629) to each product would be based on the proportion of
4558 the space occupied by each. As to whether these advertisements of my company, the expense of which has been distributed in the manner I have stated, have always contained the name of my company, I will say that way back, say, in 1901 or 1902, before I came with the company, they did advertise some products without putting the name "National Biscuit Company", but I would say for 15 years we would be safe in saying that every advertisement of the National Biscuit Company, no matter what product, would have the name "National Biscuit Company" on it. At times that name would be prominently displayed in the advertisement.

4559 As to how the expense of the space used by the name was charged or distributed, I will say I never paid any attention to that at all. If there were three pieces of goods advertised, necessarily they would have the name "National Biscuit Company" at the bottom of the ad or the top. If they occupied equal space, I would divide that three ways. In other words, the expense of the space

occupied by the name was distributed among the three products advertised.

As to when those charges for the advertisements were made, as to whether they were made as an expense incurred at the time the bills were paid or as to whether any part of it was carried as an asset or to good will or to deferred assets, I will say we have always considered it an expense, a regular monthly expense, you might say, like a selling expense.

I have three samples of the National Biscuit Company's advertising before me. I have before me one of our advertisements of "Uneeda Biscuits" and "Nabisco". As
4560 to how the expense of that was distributed, I will say I just cut it in two. In carrying out my formula in the
(3630) course of our business, it was never necessary to go into the details of actual measurements. I would always depend upon the eye.

(Mr. Mayer offered in evidence the three samples of advertisements referred to by the witness. Mr. Aldrich objected. And the objection was overruled.

The first of said advertisements, being an advertisement of the National Biscuit Company advertising Uneeda Biscuits and Nabiscos, so offered, was received in evidence and marked Wrigley Exhibit 25.

The second of said advertisements of the National Biscuit Company advertising Graham Crackers and Nabiscos, so offered in evidence, was received in evidence and marked Wrigley Exhibit 26.)

(The third of said advertisements of the National Biscuit Company advertising Nabiscos, Anolas, and Harlequins, so offered in evidence, was received in evidence and marked Wrigley Exhibit 27.)

4562 (Wrigley Exhibit 25.)

4563 (3631) (Wrigley Exhibit 26.)

4564 (Wrigley Exhibit 27.)

(3632) I distributed the cost of Wrigley Exhibit 26, half
4565 to Graham Crackers and half to Nabiscos. I distributed the cost of Exhibit 27, one-third to Nabiscos, one-third to Analos, and one-third to Harlequins.

(Mr. Mayer then fully outlined to the witness as he had done with previous witnesses the nature of the case which the Master was hearing and what the Master was trying to determine with respect to advertising, and then stated
4566 to the witness that he wanted the witness to assume that

he was asking the witness questions for the purpose of determining the proper way to allocate or distribute advertising in order to find out fairly what the profits were from the Doublemint gum to be paid over to the Larson Company.

Mr. Mayer then asked the witness what method, in his opinion, based on his experience, should be adopted for allocating advertising.)

I would advocate the method I have already described.
4567 I would make an actual measurement. For instance, taking for instance, Larson Exhibit 49, which is now before me, I would charge half to Doublemint and half to Spearmint. I think the advertisement gives each one equal publicity. That is, upon the assumption that by actual measurement of the space they would be equal. Of course, if I measured the package of Wrigley's Spearmint on Exhibit 49, it might be one-eighth of an inch out of the way, but I would say that that the space occupied by Wrigley's Spearmint on that advertisement is the same as that oc-
(3633) cupied by Wrigley's Doublemint package.

Taking Larson Exhibit 59, I would measure the space
4568 occupied by Wrigley's Spearmint crate and the space occupied by Wrigley's Spearmint gum package and Wrigley's Doublemint gum package, and I would charge to Spearmint the proper proportion as they measured up. If the space occupied by the picture of Wrigley's Spearmint crate held by the crane and the space occupied by the picture of Wrigley's Spearmint package were equal, and if the picture of the Wrigley's Doublemint package
4569 was equal, that is, if the three packages took up an equal amount of space, and if the language or text applied equally to Spearmint and to Doublemint, I do not think I would charge one-third to Doublemint and two-thirds to Spearmint. I believe in our own work that I would do it that way you know, but not if I was getting right down—this reading matter is of equal value to Spearmint and Doublemint, so if I was getting right down to the actual cost of advertising each one of these products, I would divide this space in two—I am talking about the reading matter. I would divide the space occupied by the reading matter into two equal parts if it applied equally to only two products, and then the expense of the pictured packages I would charge in proportion to the space occupied by them.

4570 In other words, If I wanted to find out the profit in the case supposed, I would measure the actual space occupied by the pictures and by the language, and distribute the cost among the articles advertised and in the proportion that the text and pictures cover.

I have examined the seven books containing the Wrigley Company's advertising matter and known as Larson Exhibits 30 to 36, both inclusive, covering advertisements
(3634) between July 28, 1914, and and November 12, 1918. I am familiar with them in a general way.

4571 I would charge all of the expense of the advertisement appearing on Larson Exhibit 37 to Doublemint. I would charge the last line of that advertisement reading "Made by the makers of the famous Wrigley's Spearmint" to Doublemint because in my opinion that would be the same as putting "National Biscuit Company" at the outset of the ad. That is put there to help the sale of the Doublemint.

We classify visual advertising like billboards or walls or newspapers or magazine advertising and salesmen all
4572 as a sales expense. Our salesmen and the service we give to the store and our advertising, and of course the advertising is a very small part of the general sales expense.

We employ over 2,000 salesmen. Outside of our bread business, which we run really separate, all of our salesmen sell our entire line of products, except in the instances where particular pieces of goods are not listed in
4573 certain territories. Every salesman sells the entire line that is listed in a certain territory. For instance, on the Pacific Coast there are certain goods that we do not ship out there because of the shipping conditions.

I would charge the entire cost of the advertisement marked Larson Exhibit 38 to Doublemint. I would charge the two lines near the bottom of the advertisement reading "Made by Wm. Wrigley Jr. Company, manufacturers of the famous Wrigley's Spearmint" to Doublemint, because I believe that was inserted in there to help the sale of Doublemint.

(3635) Referring to Larson Exhibit 46, I would divide the
4574 reading matter appearing on that advertisement equally between Spearmint and Doublemint. I would measure the two packages shown of Spearmint and the illustration of the package of Doublemint and charge proportionate

amounts against each brand. I observe that word "Wrigley's" at the top of that advertisement is perhaps in the largest type of anything that appears on that advertisement, and it is very conspicuous. I have observed that the word "Wrigley's" appearing alone in many of the advertisements is large and conspicuous.

As to what is the principle on which I say that the expense of the space occupied by the word "Wrigley's" wherever it appears in this advertisement should all be charged to the product specified in the advertisement and that no part should be charged to any good will or deferred advertising, I will say when I stated that I would divide up the reading matter, I included in my mind the word "Wrigley's" appearing at the top of page 1046 of the record.

4575 As to what reason I have for not charging any of the expense of the space occupied by the word "Wrigley's" wherever it appears to good will, I will say, it would be almost impossible to define what good will created by advertising is, because the advertising is such a small part of good will, it is a very small part. It is your service, your goods, your marketing, and, with this particular business, how we get the goods to the consumer, whether they reach there in a good condition. I believe that the good will of the National Biscuit Company comes more from the quality of its goods and its service than it does (3636) from mere advertising of any particular product with the name "National Biscuit Company" underneath it. In fact, we have had a great deal of experience with putting goods on the market, advertising them with the National Biscuit Company name and the "N. B. C." trademark, the same as we have done with many successful goods and had them flat failures, so the mere fact of putting the name "National Biscuit Company" on the ad will not build up a business on a product that the people do not want or the product is not right. So we have never charged, 4576 at least in the advertising department, we have never charged anything to good will in any advertisement.

I have had experience in advertising a product that has been a financial failure. We put out a piece of goods called Rykon sometime ago and we advertised it extensively. Our salesmen were all keyed up on it, it was distributed extensively, and of course I cannot tell you what it cost us, but it was a failure. We thought it was a good

product, so far as our experience went. In fact, we thought it was something that was extraordinary or we would not have put this special effort on it because we are putting new goods out all the time. The name of the National Biscuit Company and our trademark was advertised with it.

Then we spent a lot of time and effort on some goods called "Mother Goose" Biscuits. Those biscuits were gotten up principally to appeal to children and they had
4577 Mother Goose pictures on them. We spent a lot of money in advertising, put a special sales effort on them by putting up a special counter rack for them, and did everything we know how to do to make them a success both from a marketing and service and advertising standpoint, and they were a failure.
3637 In connection with those advertisements, we used the name of the National Biscuit Company and its trademark or seal.

The National Biscuit Company makes about 275 different kinds of products.

As to what effect the advertisement of one product will have on a non-advertised product of the same kind or char-
4578 acter according to my experience, I can give you an illustration on that with Uneeda Biscuit. When we started there were, you might say, hundreds of non-advertised or littel advertised soda crackers on the market, and of course it put off the market a great many varieties of soda crackers even in our own business. Of course, some —I suppose we are to be exact about this—were arbitrarily dropped. We saw the sales drop and we arbitrarily moved them away from the market you know.

In my opinion, the Wrigley Company before a great length of time would feel a loss of business in Spearmint if he put all his efforts behind Doublemint, because he would have to reach the point where he could increase the total consumption of gum enough in this country to get a big business on gum before he would offset that effect, but that would be his idea I should think. Of course, our business is a little different. We are in competition with all foods even down to an apple or a package of raisins, or whatever it might be. If we can get people to eat some of our biscuits in place of other things to eat, we gain just that much, but I cannot see where that would be true of chewing gum.

(3638) As to what would be the effect of Wrigley's adver-
4579 tising in one advertisement Spearmint and Doublemint gums on his other gums not named in the advertisement, as I have stated before, I would not charge against any other product he would make, any part of one advertisement, where the name or picture or some description of that particular piece of goods did not appear. My opinion is if Wrigley's has a reputation on some one particular piece of gum that I think it helps the sales of any other piece of gum advertised with it, and it is a link-up. I believe in this particular advertisement that the link-up of Doublemint with Spearmint would help the sale of Doublemint even beyond its proportionate size there, but it would be a thing that would be so intangible that it would be impossible to figure it out in dollars and cents. I am referring to page 1046 of the record.

4580 According to my experience, if Wrigley did not advertise Juicy Fruit, but advertised Spearmint or Doublemint, and he kept that up, he would eventually kill his Juicy Fruit. I would not believe at all in a suggestion that the expense of advertising a particular product should be charged to the whole business on the basis of the sales of the different products, because I believe advertising is a purely selling expense and each piece of goods should stand on its cost of selling. We would not be able to judge, if we made our charges that way, whether any particular piece of goods we made was showing up a profit or not, for instance, if we distributed our advertising for Uneeda Biscuit or Nabisco over two or three hundred varieties on the basis of sales. Why, the proportionate charge to Uneeda Biscuit would put it
(3639) down so low on Uneeda Biscuit that we would not know whether we were making any money on Uneeda Biscuit or not. The same thing would be true of Zuzu Ginger Snaps or any other product we make. We con-
4581 sider it a selling expense and each piece of goods has to stand absolutely on its own legs and we want to know what it is costing us to sell, market and distribute that particular piece of goods. If it does not pay us to advertise it, we stop advertising.

If Uneeda Biscuit or Wrigley's Doublemint gum were advertised for many years, and then stopped such advertising, I believe that the wave of sales would recede and then eventually it would become unknown and the public

would forget it. That has been proved a great many times in the past.

As to how the expense of advertising has varied with the different products we manufacture as compared with
4582 our sales, I will say on a piece of goods that we have advertised that we have not secured the results over the length of time that we expected to, of course, the percentage has been high, but on other products that we have gone along on and made a success of, why, of course, the percentage is comparatively low. As to the variation in percentage between the two that I speak of, our percentage in advertising on our total business is less than two per cent. I would say on particular products advertised that it might range from three to five per cent. Of course, those figures I give you now are just from my memory.

As to what was the percentage of advertising expense to the sales in those instances where we concluded to take the products off the market, I will say I believe I would be safe in answering that question in saying that the
(3640) cost of advertising and distributing the sales became so great that it eliminated all profit in the piece of goods. It is hard to remember actual figures.

4583 *Cross Examination by Mr. Aldrich.*

The advertising department of the National Biscuit Company is one of many departments. It is the aim of the National Biscuit Company to keep track of each department, so it can ascertain whether it is deficient in any way. The advertising department is charged with what goes out. We get credit for nothing. That is considered all expense. As to the other departments that are productive or expected to be productive, the company
4584 charges to the department everything that is paid out on its account and credits to the department what comes in from that department.

I stated that the method which I have described of charging advertising was the method that I used in my department, but that I had no knowledge as to how the company treated it. Broadly speaking, it is an ultimate expense of the company in every case, and the method I have described is a method adopted for ascertaining the

advertising cost of the different brands that we are engaged in selling.

To determine whether any particular brand has been profitable or unprofitable, there will have to be contact between the cost as found in my department and the sales department in the last instance. The sales department has charge of the salesmen on the road. The advertising
4585 department has direct contact with the sales organization all over the country in regard to advertising matter and the following up of advertised products by sup-
(3641) plying it material, seeing that they put materials in grocery stores, and display work, and securing grocers advertising to use our cuts. It has a great many ramifications, but the advertising department has direct contact with the sales organization all over the United States.

I would say the advertising department is subject to the sales department, or is a subsidiary department of the sales department, because with any business the sales is the big ruling department.

We do not have a name for each article in our entire
4586 line. To illustrate, the Graham package on the top of Exhibit 26 has no name. It is simply descriptive in its character. Any biscuit concern can put out Graham crackers. The purpose of applying distinctive names to so many of our products is to enable the public to ask for a known brand by name, but with the great number of products which we put out it would be impossible to educate the public into asking for two or three hundred different products by name. They could not remember them.

I would say that possibly 33-1/3% of our products have trade names. Those trade names are distributed through the different branches of our products, crackers and
4587 wafers and other products. Broadly speaking, about one-third of our business is in package goods, that is, in individual packages, the other two-thirds of our products are sold in what we call bulk.

We have done some advertising with bulk products with trade names, but we have confined most of the advertising to the package goods. Our bulk goods are sold to
(3642) the grocer who in turn sells them to the customer. Through our service to the grocer in twice a week calls and keeping the supplies fresh in the store and doing everything we can to get the goods for the consumer

fresh, and the other part of our business, that is, referring to the package end of our business, I would say again that approximately half of that would be in what we call sponge goods. Sponge goods are goods like Uneeda biscuits, Oysterettes or N. B. C. soda crackers, goods of that nature. In other words, what the public recognize as a soda cracker of some kind, like Saltine
4588 soda crackers. All of these have trade names. For instance, I just mentioned N. B. C. soda crackers. Except for the "N. B. C." there is no trademark, but it has not a distinctive trade name. We give certain of the package goods trade names, so that the public can ask for a particular product. The reason for that is that practically every biscuit company ends in "B. C." and they would have "A. B. C." Graham crackers and "B. B. C.". Graham crackers, which would be very confusing with "N. B. C." Graham crackers, for instance. And we would like to put, if we could get enough good ones, a name on every product we have, but as I say, we make so many products that it would be impossible to advertise them all anyway and get the public to recognize them. We endeavor by the trade name on that package,—for instance, Graham crackers has never been changed, it is one of our largest sellers because it is one of the best and people recognize that package as ours. People do not recognize
4589 it by the form of the package, because practically all our competitors put out Graham crackers in the same size and shape package, it would be the "N. B. C." seal. We put that on every package of Graham crackers, and on all these special brands for which we have special names, in
(3643) small packages. We do put out other products like fruit cake and various things that might not have the N. B. C. seal on, which, by the way, it might be interesting to know that it has only been the last three years we used the N. B. C. seal, approximately three years. Before that we used a seal called the "Inner seal" for years, and we just changed over to the N. B. C. seal.

There is an idea of exclusion in these trade names that we have adopted and sought to make widely known. We have endeavored to have users designate or know these packages through several methods. Of course, we have endeavored to do it through publicity, which is advertising. And then we have had over two thousand men. We endeavor to train them to lay special stress on the dis-

plays in the grocery stores, these packages, and we furnish at even less than cost various racks and display tables so that it can be done so that when a woman goes in a grocery store and she buys one she will recognize it again, and, of course, there is always a variety of packages of different kinds that we endeavor to keep displayed. We have made some of these names widely known.

As to whether they stand for our product in the eyes of the buying public, I will say there is a peculiar angle
4591 to that in our business. We are trying to offset this, but we still have a great many letters come to us "Uneeda Biscuit Company" or "Zuzu Company". We still have people that write in and ask if we make anything else than Uneeda Biscuit, for instance. I have people ask me that personally. They are surprised that we make Na-
(3644) biscos. So when you ask me if they are generally recognized as a National Biscuit Company product I believe that "Uneeda Biscuit" has been so well advertised that it stands alone, you might say, and has really greater publicity or acquaintance with the people, or the public is acquainted with it more than with the National Biscuit Company itself. Of course, we are upsetting that every way we can, but I think it is also true to a great extent in the case of Nabisco. It is true of a great many products which we have been advertising a great many years because we have advertised products and not the National Biscuit Company.

(3645) So far our products have trade names we have ad-
4592 vertised the products by advertising the trade names. We have done that for the convenience of the buying public. It would be much easier for a purchaser to go in and ask for a package of Uneeda Biscuit than to ask for soda crackers made by the National Biscuit Company; that's the reason.

As to whether we also have a selfish interest in it, I will say the easier it is for the public to buy and not be confused, why, the bigger our business is going to be. That would be selfish interest.

We have made these names widely known. The most
4593 widely known is Uneeda Biscuit. I think Nabisco would come next. Other well known products are Lorna Doone Biscuits, Zuzu Ginger Snaps, Oysterettes. Anola is a specialty. I would not say it is as widely known as Na-

bisco, for instance, but we have it on the market for a good many years and it has a good sale and it is fairly well distributed.

I will explain how the expenses of our 2,000 salesmen which we have on the road are allocated. We have the country divided up into selling districts, and we have selling branches, without manufacturing branches, at various points around the country. They keep track locally of all expense connected with selling and reports are sent in to the head office regularly, and if a district is not making money in their sales, say it is a district of five or six salesmen, why, we investigate it, of course, from headquarters and we find out whether it is one or two salesmen that have fallen down and not making money for the company or whether it is the whole organization. That's the way we keep track of that.

(3646) The cost of the salesmen's salaries and the traveling
4594 expenses is treated as a general expense, as far as my knowledge goes. I would know if it was otherwise. At the time I was sales manager it was a general selling expense.

These various names which we have so widely advised, and which have become widely known have acquired great value, as long as we keep up the quality and service. The reason I make that statement is that I believe that even our best known name "Uneeda Biscuit" could lose its entire value within a few months.

I assume that in the conduct of our business we have to maintain the quality of our products and the same fair treatment of our customers that has marked the history of the National Biscuit Company in the past.

4595 (Mr. Aldrich then instructed the witness that in any question he might ask him about the value of the several names he, Mr. Aldrich, made the same assumption, because he conceded freely that not alone publicity but service was requisite, to customers, to maintain a value for the product.)

There has always been a lot of controversy about the value of a trade name. Personally I believe that we could change the name "Uneeda" on our package and with the same amount of publicity we could go along and announce the change, and I don't believe it would affect our sales.

4596 I understand a witness here the other day from Liggett

& Myers testified that at the time of the transfer of Liggett & Myers to the American Tobacco Company the brands which they owned, which had been widely adver-
(3647) tised, were valued at $40,000,000. As to whether I think that the good will or the brands which the National Biscuit Company could turn over to a combination would have a high value, I will say I could not answer that for the National Biscuit Company, what the financial men might think, but as an illustration of that, the Reynolds Tobacco Company put out an entirely new brand, and it became the largest selling cigarette in the country, as I understand. If we lost the name "Uneeda" tomorrow, I believe we would still have the biggest selling biscuit. Of course, in financing or reorganizing the fianacing of a firm they want all the assets they can get, but in my years of experience in the advertising field, and knowing the rise and decline of, you might say, trade names and good will, I would hate to put my money in any concern where the assets were backed by anything as visionary as the value of a trade name.

4597 As to whether I know of any combinations that have been made of successful prior businesses in which the value of the good will has not been made a basis of capitalization, I will say I have not noticed in any way; of course, in my business I have not been interested in the forming of combinations, and so forth.

As to whether it has cost a great deal of money and effort and service to build up the value of these names, I will say the cost would not be the total cost. It is part of the expense of marketing. It is just as much a part of the expense as marketing, if I send a salesman from house to house, which is now being done in a great many cases. For instance, there is a bread company in Buffalo that has taken that method of selling. They do not advertise except in that way. It is all part of the expense
(3648) each year as it is incurred, each month as it is incurred, each sale as it is made. It is one method of selling.

4598 Answering, from a strictly business standpoint, the question as to whether it has cost us a great deal of money and effort and service to build up the value of these names, it has not cost us money. We have made a profit on that right along, or we would not have done it. It is one expense of course, but we have made a

profit on that investment. The only way I could answer your question yes or no would be to acknowledge that there is a tremendous value in these trade names, which which I do not believe.

For a profitable business it is necessary to have a valuable business.

4599 I am still maintaining that to my opinion you do not make a profit off the name; you make the profit off the goods you are selling; the name is an incident.

As to whether our continued profit on goods sold under the names referred to has made the names valuable, so that those names stand for goods of a certain quality and service by a corporation of a certain character, I will say just so long as we keep up the same product, the same service, and some everything; and that is the reason I never consider names of that type or character an asset, because they are only part of a big whole.

Where we keep up the character of the goods, and the
4600 service to our customers, the names continue to have a value, as a part of the whole thing, as a whole package of Uneeda Biscuit, for instance.

I have not known of any specific cases where in case of death it has been necessary to ascertain the value of stock owned by the deceased in a corporation, and in
(3649) connection with that to ascertain the value of the good will; but I know the argument about the value of good will; I know there has been quite a controversy, and I know a lot of business men would not agree with me on the value of a trade name.

4601 I was impressed with this question of good will years ago. When the National Biscuit Company was formed there were several concerns that entered into this combination at that time, and they all had, or a great many of them had, a lot of good will, so-called, like Kennedy's Biscuits, and Bremner's, and various other organizations that had a great deal of so-called local good will.

The President of the National Biscuit Company at that time, when he got to looking into this thing, turned over the "Kennedy" name and the various trade names that we had, and started out after this combination was formed with "Uneeda", a new brand, and excepting for the service that these various plants have rendered, as far as any good will or publicity of the names and various things like that, why, to all intents and purposes they were

killed off. Now, that's the way I have been brought up in a business life and have seen how successful that was and have seen that done.

4602 I believe in that combination, when stock came to be issued, there was an allowance made for the good will of those several firms. I refer to good will as the trade names that the Company absorbed at that time. As I remember the whole proposition, there were three fairly good sized corporations formed together, and then they took in some smaller local factories. The New York Biscuit Company, as I remember, American Biscuit, and the United States Biscuit Company, were all fairly good sized corporations at the time. The business was not national then.

(3650) If we lost the name "Uneeda" tomorrow, and nobody else had it, so that there would be no confusion in business by some other concern suddenly flooding the
4603 country with a Uneeda Biscuit which we did not make, before we could get a new brand out, I don't believe it would be a very serious matter, if we just dropped the name, but if it was turned over to a competitor that had the facilities of almost immediately flooding the market with it, yes I think it would be very serious.

That is true of the other brands. To explain how we have acquired the close contact with the people at large who either buy or consume our products in the United States, I would say the greatest factor in that was our direct contact with the grocery stores and through the grocery stores with the consumers, because it has enabled our salesmen all over the United States for years and years to hold demonstrations showing the different goods, what they are used for, and so forth. I would say that that is the greatest factor, because we are one concern that deals directly with the local stores.

I have testified that we have branches in the different sections of the country, and to each branch is confided the
4604 care of the customers in that locality.

The grocers practically all buy direct from us, although we have a few jobbers. Each divisional branch of our business keeps in close contact with the grocers and customers, in the way described. We sell to restaurants and drugstores and hotels and clubs direct. I do not mean by that statement that all restaurants buy of us, though. Some buy from grocery stores.

4605 Rykon was a biscuit made of a combination of grains that we thought,—in fact, President Green thought it was (3651) going to be one of our biggest sellers, and we all did. That and Mother Goose Biscuits were both failures.

I understand that Wrigley, since the end of the infringing period, has used his own name, and the name "Doublemint".

(3652) I believe that the extensive advertising by Wrigley gave a value to the name of "Doublemint" at the time 4606 advertising was going on. That is, as part of the expense of the advertising campaign, I certainly believe that. As to whether it gave any value to Doublemint for the future, that is the old question up again. If I could understand what counsel meant by value, whether it is a question of cash or something they are going to realize on in the future. I think if Wrigley stopped advertising Doublemint tomorrow that his sales would decline and go down, especially if he put out other brands and kept Wrigley's other stuff going.

I will assume that during the infringing period the Wrigley Company sold $8,917,286.90 worth of Doublemint, and that the cost of manufacturing the Doublemint 4607 thus sold was $3,733,956.52. I will assume that would make a gross profit on Doublemint, not deducting anything for expenses except the cost of manufacture of $5,183,330.38, and that during that period the Wrigley Company claims to have expended in advertising of Doublemint, apportioned practically along the line of my testimony, the sum of approximately $2,900,000. With that wide publicity and with those results in sales as compared to cost, as to whether I am prepared to say to this Court that the name "Doublemint" had no value, on November 12, 1918, I will say I would have to answer again it would have value if it is used and money spent on it which Wrigley would have to do, as I understand this case now, from 1918 on. I would say that Wrigley had a much better start than starting out fresh.

I would say that comparing the amount of advertising 4608 with the amount of sales, the Wrigley advertising of (3653) Doublemint during the infringing period, using the figures just referred to, was a failure when applied to the standard we have in our business. If we spent $3,500,000. on a product and it only reached a sale of $8,000,000. in 4½ years, we would consider it an absolute

failure, because the amount of money spent in 4½ years was too great in proportion to your gross sales. We could not do it in our business. Our total expenditure, as I explained before, in advertising is less than 2¼. You figure percentage on that and that's a terrific proportion. Of course, I don't know anything about the gum business, so I don't know, that might be profitable to them, but it would not be for any line of goods we have had experience with.

4609 I did not exactly say that when the advertising of our goods reached a figure where it left no profits for us, that it was usual to drop the goods. I said when the total of the selling expense and advertising showed no profit that it would be better to drop the goods. I did not put that all on advertising because in our business that is such a small part of our cost. I assume that as between the Wrigley Company and the Larson Company the last day of the accounting, to which the accounting reaches, is the same as the end of the business as between those two people, and that value in all things must be estimated as of that time. On those assumptions, the fact that Doublemint is retained would have no weight with me in the consideration of the question as to the value of the advertising, so far as my experience has been with figures like that. That amount of money spent in securing $8,000,000. worth of business, we would consider the thing an absolute failure with no possibility of
(3654) life, but I do not know anything about the gum busi-
4610 ness. I am saying about our business. In fact, I would go on to say I know I would not be with the Biscuit Company if I continued that length of time to show no greater results than that. We aim to earn 8% on sales. If over and above all expenses 8% is shown as a net result, we regard the business as satisfactory, or tolerable so.

4611 October 16, 1922, 2:00 o'clock P. M.

(Hotel Belmont, New York City)

We intended to make Rykon and Mother Goose trade names. In fact, we had trademarked and copyrighted both of them. It is a hard question to answer whether the failure of those two products did the National Biscuit Company any harm beyond the losing of money ex-

4612 pended in trying to introduce them. To explain, the way I look at it, the trouble with the Mother Goose was that we had a nice flavor, but they would not keep. I think if anybody bought a National Biscuit Company product like Mother Goose when they became rancid, they would hesitate a little before they got any more of the National Biscuit Company's products if they were not regular customers of ours and knew that our other products would be nine times out of ten in good condition. That would be hard to analyze. I would rather state that we figue our loss the money we spend on salesmen and the money spent in advertising because I could not figure what our loss would be on the other hand.

As to whether a successful campaign ads to the value or reputation of the National Biscuit Company in the (3655) same ratio as a proper package, I will say it would be hard to analyze that in the same ratio. I acknowledge that it might help us some and it migh help the reputation of the National Biscuit Company to put out a good product that would be successful, that would be very hard to analyze.

A large advertising corporation like the National Biscuit Company gets the wide acquaintance and business 4613 that is national in its character through the establishment of bakeries at the proper places, to get goods fresh to the people, the organization of a sales force that can give service to the grocer, help him distribute and sell his goods, get the goods as fresh as possible to the consumer through that organization, and then telling the people the best way we can what we are doing. By "telling the people" I mean that that is all the advertising we do, it is all the advertising we actually pay for in publications and billboards, street cars, whatever it may be, that's the advertising that the salesmen do by word of mouth, the advertising they do in the store windows, and the follow-up in the groceries and the displaying of our goods, taking that all into consideration as advertising. Of course, advertising is a benefit; in fact, I believe that in the present day method of business it is a necessity.

As to whether it is a benefit to the company or to the brand advertised, I will say we have always figured the benefit to the brand advertised because we have always 4614 figured things out this way. Three years ago when

we changed our trade mark, we did not put the National Biscuit Company more prominently forward. The change was made in the seals on the end of our packages which were changed from "Inner Seal" to N. B. C." seal. The inner seal was not a method of wrapping the
(3656) package. It was just an arbitrary series of letters making the name "Inner Seal". At first that package was a patented package. Of course, it ran out some time ago. But I don't believe to my knowledge that the words "Inner Seal" had anything to do with the method of wrapping.

The Beatrice Creamery Company and others that used that package never used the term "Inner Seal" because
4615 they could not use it. You see, it was just a trademark. It had no reference to the method of packing although they might have used the same thing. It was an arbitrary name "Inner Seal", for that special seal. It was put into the special mark with a cross above, taken from an old printer's mark, you know, a cross above the word, and, as I understand it, not being in the legal department of the National Biscuit Company, but, as I understand it, the name "Inner Seal" had no significance at all in regard to the method of packing, wrapping or anything else. I know that in our advertising we always use it as a term like any other arbitrary name would be. We never use it as an inner wrapping or anything like that.

As to whether "Inner Seal" had anything to do with the idea of advising the public that the goods were put up in waxed paper and protected, I can answer that by explaining why we changed it. We advertised for years "Buy goods in Inner Seal packages", and "Moisture proof", not that the name meant moisture proof. We discovered after, as I have said, eighteen or twenty years of this method of advertising a trademark, that it applied only to one-third of our business because an inner
4616 package, as we always advertised it, was only our package end of the business, so we killed that right off after
(3657) all these years of publicity on it, and changed it to "N. B. C." seal so we could put it on anything we made no matter what it was, whether it was in package or bulk or anything in the world.

All these packages I have spoken of as being moisture proof were wrapped on the inside with this waxed paper, and the packages themselves were held together by these

interlocking ends or the Peters process. We dropped the words "Inner Seal" as our trademark and put on "N. B. C." with the same sign that we had used before
4617 in the inception of the Inner Seal. We changed that Inner Seal package to N. B. C. package, but used the same sign all the time except the change in the letters. We left off the words "Inner Seal" and substituted "N. B. C." The sign "N. B. C." was not on the package when we used "Inner Seal". It was put on when we discarded "Inner Seal". Of course, our "N. B. C.", which means National Biscuit Company, may have been used on some other package, maybe on a Graham cracker package or something like that, but had no connection
4618 with our trademark. We have used both "N. B. C." and "National Biscuit Company", I believe ever since we have been in business, but never on our trademark. This seal was our trademark with the words "Inner Seal" in place of the space now occupied by "N. B. C."

(It was agreed that the record could show that the witness had been pointing to the right-hand end of the package or box of Uneeda biscuits on the top of Wrigley Exhibit 25.)

The circle and the cross above it was used all the time,
(3658) and we simply changed the lettering "Inner Seal" to "N. B. C." That constitutes the entire change. The color remains the same and everything, with the exception of the change pointed out.

The change was made so we could have a universal
4619 trademark that could apply to all goods, whether package or not, because for fifteen years or more I would say we had been advertising a little slogan "Buy biscuits in inner seal pacakages". You see, for years and years we had been advertising "Buy biscuits in inner seal packages," but, as I explained before, a very large proportion of our business is in biscuits not packed in individual packages, due either to the nature of the goods or to the demand for them, and we felt that the National Biscuit Company should have a trademark that would apply not only to a part of their business but to their entire line. That was the reason for the change. We wanted a trademark that would be applicable to all our goods that we made. It was not to protect our goods that we made, but to protect the consumer. As to how it would protect the consumer, except as it reflected our

good name, I will say for this reason: We do make a lot of goods that are hard to identify in any way, in bulk, and our idea was when we made this change that we would put this on bulk goods, that is, where the consumer did not get them when they went into a grocery store
4620 they would recollect it was made by the National Biscuit Company by having seen the seal on the bulk goods that we had and on the package goods. In fact, for a long time we did not have our regular seals on our sugar wafer line, that was a different seal, and we put that into the "N. B. C." seal to have a universal seal for everything we make, or trademark.

(3659) We made the change because we wanted to make the National Biscuit Company name one of value in procuring customers. Before that time we could not make it so because we had the "Inner Seal" and no trademark on two-thirds of our business, we had not made it so. We hoped to make it so. We had this trademark on the package goods all the time. We hoped we had on the package goods a trademark that meant something to the buying public. As to whether it was be-
4621 cause we believed it had that we desired to extend it to all our goods, I will say we did not put that trademark on, we took a new trademark. We gave up whatever good will there was in "Inner Seal", if there was any, and we commenced to put out a new trademark. Now, it is too early with our new trademark name to say what good it is going to do.

We did not change the circle and the lines in fashioning this so-called new trademark, but in all our advertising of the trademark we always called it the "Inner Seal" trademark, for years and years. We never said it was a circle and lines above it. Of course, the end has the red seal with the circle and lines above it yet, but you cannot find the words "Inner Seal" on it, and that is what we have been advertising for years.

We made the change, as I have said before, simply of putting the "N. B. C." on it. It was because we thought that seal, which we later changed with the exceptions noted, had attained a value that we retained it, but put it in a form so that it could be used on all of our products.

4622 We seek to make 8 per cent. on our gross sales. That is, if we did a business of $50,000,000. a year, we would

(3660) hope to make $4,000,000. a year net profit for the stockholders.

4623 I know that some concerns believe in institutional advertising, and possibly for some concerns it may be a good thing. I never believed it was advertising. I have always believed it was more of a self-jollification, you might say. I cannot conceive of spending money on anything but a product to sell because I believe advertising is nothing but a sales expense. We have had proposition after proposition put up to the National Biscuit Company for institutional advertising by some of the best advertising agencies in the country and I have never been personally persuaded that institutional advertising was a good thing unless the concern has some surplus money they want to spend and have a good time with. I never believed it was business.

4624 I will explain how I define institutional advertising. Institutional advertising to me should take no part,—I mean what they call institutional advertising. Institutional advertising is possibly an advertisement showing the buildings or the plant, or the distribution of service, or say, in regard to the telephone company, the number of wires they have, and this and that and the other thing. Now, we have in the past ourselves shown what I call institutional advertising like we have shown a map in, say, the Saturday Evening Post with all our different distribution branches, and so forth. I have never believed personally that institutional advertising should ever be charged to the advertising account. They might

4625 have some other account for it, if I was running the business, they might call it propaganda or anything they

(3661) liked. To me advertising is selling and should be considered as such, and anything you can't lay your fingers on and charge against any particular thing, there should be some other account for it.

I believe institutional advertising should be charged in a separate account because our advertising I know all goes into the general fund towards selling expense. Now, I have heard enough and had experience enough with corporations to know that oftentimes amounts are appropriated for what we might call propaganda or any other thing. Now, what could you charge it to on your books? They may charge it to advertising, but that fund you have got to keep as a separate item.

I would not say that advertising such as the American Bell Telephone Company is indulging in, showing the character and extent of its service, is not a proper expenditure of money from my viewpoint. I don't know enough about their business to say they are not spending their money properly, but all I know is that the National Biscuit Company would not spend money that way to
4626 that amount. We may occasionally,—sometimes somebody has an idea, as everybody does, maybe an officer of the company, or something, and it goes through, but in general our business is to advertise goods and it is part of our selling and we have got to advertise something that is specific. As the great mass of the people, I don't believe they care whether you have one factory or fifty. It is goods they are interested in. They are laying out their nickel or dime for the goods.

It is a wonderful advantage to a business to have back of it a long history of success, so far as its inner organi-
(3662) zation is concerned. I mean, for the men that are with it and want to be with it and look back on the past experiences, but with the public it has been illustrated time and time again "no", but a brand new company starts up with a brand new product and Bingo! they have the trade.

I believe that a firm or a manufacturing company ac-
4627 quires character, just as an individual does. I would not say that such a firm, having a long and successful business experience, may lose its business to a new firm, if the old firm keeps as good a product all the time. If it is as good a product and handled in the same way with regard to service and everything else taken into consideration, the old firm should not lose its business under those circumstances.

The character and reputation of a firm is an insurance of a continuance of business if at the same time it is accompanied all the time with good service and letting the public know about it, continuously the same as the new concern would do. A firm has to let the public know about its product for daily sales. There are new generations growing up, there are new homes started every day and new buyers every day, thousands upon thousands of them needing education all the time. You have got to keep it up. If you stop—that's the reson I call it an expense—if you stop, just as if you stop buying flour, you

can't bake; if you stop your publicity, you stop letting people know about something to buy and some other people will begin and that's the reason I saw that your sales recede.

4628 The advertising is not only to keep our old customers advised that we are yet in the field. We aim to educate
(3663) new ones all the time. As to whether our old customers require this advertising expense is a great problem. I don't think it has ever been decided what a holding expense would be; you hold your present customers only. We, at least I feel personally that if a concern did not want to increase their business, they would not have to keep on spending a certain proportion. What that proportion would be would depend on the article, depend on what the distribution was and various other things,—but even to hold a business—I am assuming now you are dealing with retailers—by the present day methods of marketing, 90% of the public doesn't care whose make
4629 the product is, but because the product is good they want it again unless somebody else persuades them differently. Now, if you stop telling them all the time your product is good, some other manufacturer is going to tell them theirs is better and they believe it and you are going to lose a customer. I believe there is a certain amount of any appropriation for advertising should be figured out as a holding apportionment, and I would call it as holding your existing business. Now, what that amount is in any particular business would be pretty hard to analyze.

It would probably depend to some extent on the nature of the article.

The appropriation for everything over what would be necessary to hold the customers is to get new customers. If it does not, then I would figure the advertising is a
4630 loss. I did not say that I didn't think the trade names of the National Biscuit Company had no value. I said I did not believe they had any value that could be capital-
(3664) ized because their only value was in continued expending and doing and working this way, and with the large amounts we spend on advertising. I would like to deny the fact that we do spend large amounts in advertising. I suppose our appropriation for this year would run around 1% of our total business. I said our advertising was around $1,000,000 a year. We really spend

more money in service and in getting the goods to the stores with our delivery wagons and salesmen calling as often as possible, looking over the stock, fixing the stock —that's what we spend our money on. It is a service proposition, more so than in what you would call paid publicity.

4631 Some years the strictly advertising expense through the medium of papers, billboards and so forth, has exceeded a million dollars, and some years it has been lower. My statement was in this past year. I mean what we will have done by the end of this year. When I was first asked about our experience I said since we have been in business it was over $10,000,000. Of course, we have been in business for over 20 years.

(3665) LOUIS C. RIECK, called as a witness on behalf of the
4632 Wm. Wrigley Jr. Company, being first duly sworn, testified on direct examination by Mr. Mayer:

My name is Louis C. Rieck. I live at Westfield, New Jersey, which is 20 miles out of New York. I have lived in or near New York City 16 years. I am at present advertising manager of the Corn Products Refining Company. I have been connected with that company 24 years past in various capacities. I commenced with a clerical position in the invoice department. I have been connected with the sales department and advertising department. I was in the sales department about 9 years.

4633 I have been with the company from 1901 to 1909 in the sales department. I have been in the advertising department for the last 8 years. During the last 6 years I have been manager of the advertising department.

The Corn Products Refining Company manufactures corn products, the best known of which are Karo Syrup, Argo Starch, Mazola Corn Oil. Those are the products which we advertise and are best known to the general public. We also manufacture corn starch unmixed for manu-

4634 facturing purposes, textile starch, gluten feed, gluten meal and so forth. The company at the present time has four factories located at Argo, Illinois; Kansas City, Missouri; Pekin, Illinois, and Edgewater, New Jersey.

Our products are now and for the last 10 years have been sold throughout practically the world. That is, the

bulk products are sold throughout the world, but the sale of advertised brands has been confined practically exclusively to the United States.

(3666) My company does about $100,000,000 business.

In advertising the products of our company, we have
4635 used magazines, newspapers, billboards, street cars, and direct work with the retail trade through our salesmen and advertising men. This advertising has been national in scope, and has continued practically so for the past 10 or 12 years.

The three products I have mentioned, Mazola, Karo and Argo, are products I refer to specifically as being advertised by us. We have been advertising them, or some of them, in a single advertisement practically entirely.

I have before me a copy of one of our advertisements from a trade journal known as The Wholesale Grocer. Its circulation is scattered throughout the United States.
4636 I don't know that that paper has much circulation in the far West, but outside of that they have a circulation scattered throughout the United States.

(Mr. Mayer then offered the advertisement in question in evidence. Mr. Aldrich objected on the same grounds as he had theretofore made to similar objections. The objection was overruled, the master stating that the objection theretofore taken would apply to all questions along the line of how the advertisement was changed or distributed.

The said advertisement of the Corn Products Refining Company published in the Wholesale Grocer of June, 1922, so offered in evidence, was received in evidence and marked Wrigley Exhibit 28.)

4637 (Wrigley Exhibit #28.)

(3667) A third of that advertisement was charged to Karo,
4638 a third to Mazola, and a third to Argo. We distributed the expense of that advertisement in that way, because we figured that each of the products received practically the same amount of publicity, occupied practically the same amount of space, and, doing as little as we do of combination advertising, as a matter of convenience.

Our advertising is charged immediately and direct to sales expense covering the product advertised. If there is only one product named in the advertisement, the advertisement is charged 100% to that product. If there

4639 are only two products referred to in an advertisement, each occupying the same amount of space, 50% is charged to each product. If there was a great difference in the space occupied by the products, the space would then be measured, but, as I said before, if the space occupied by each product is very nearly the same, we, as a matter of convenience charge it pro rata. After we measure it, we charge according to the space. For instance, if there is one product that occupies two-thirds of the space and another one-third, we charge two-thirds of the entire advertisement to the one product occupying that space and one-third to the other. Those charges are made immediately after the advertisement appears or as they are billed to us by the publisher.

In our advertisements it is customary to have the name
4640 "Corn Products Refining Company" appear. No special charge other than I have already said was made because of the name. I don't think the cost of our advertisements should be distributed on the basis of sales, because if the various packages occupy the same space, they should be charged with that space regardless of what
(3668) the sales may be. Possibly one of the products may not meet with the requirements or taste of the trade, and therefore the sales for that particular product might be less than the others.

(Mr. Mayer then offered in evidence Wrigley Exhibit 29, being an advertisement appearing on page 15 of The New England Dairyman. It was received in evidence and marked Wrigley Exhibit 29.)

4641 (Wrigley Exhibit #29.)

4642 Wrigley Exhibit 29 was distributed one-half to Buffalo Gluten Feed, the other half to Diamond Corn Gluten Meal. We distributed the cost of that particular advertisement that way because each brand has practically 50% of publicity in that advertisement. That method has been in general practice by us.

(Mr. Mayer then instructed the witness as to the status of the case at the time it was referred to the master, and what the master was called upon to determine. He then told the witness that in all questions he was about to put to him he should assume that the desire and purpose was to ascertain the proper rule to be applied in the distribution of advertising expenses in the kind of a case that had just been outlined to the witness, and to ascertain actually

and fairly and honestly what the profits were of Doublemint gum on the theory that they belonged to an outsider.
(3669) He then asked the witness to state what in his opinion
4643-4 was the proper method of charging the cost of advertising in such a case.)

I believe that is covered by my answer a little while ago saying that the cost should be divided in my opinion, based on the space occupied by each product and on that basis pro rate the entire expense of the advertisement, over the entire advertisement, if it was a page, or whatever the space may be, and then charge it to the definite products advertised.

I have looked over in a general way the advertisements of the Wm. Wrigley Jr. Company between July 28, 1914, and November 12, 1918 as they appear in the seven books of advertisements marked Larson Exhibits 30 to 36 inclusive. In my opinion, the cost of those advertisements
4645 should be pro rated according to the space occupied by each product and charged according to the products advertised.

Larson Exhibit 37 is strictly a Doublemint advertisement and should be charged entirely to that product.

In my opinion, the expense of Larson Exhibit 38 should be charged 100% to Doublemint.

Assuming that the language of Larson Exhibit 41, which is in French, is equally applicable to Spearmint and
4646 Doublemint, I would measure the exact space occupied by the Spearmint package and the Doublemint package and distribute the cost of the entire advertisement accordingly.

The expense of the advertisement, Larson Exhibit 44, I
(3670) would distribute according to the same formula as I applied to Larson Exhibit 41.

4647 I would apportion the amount to be charged to Spearmint and the amount to be charged to Doublemint in Larson Exhibit 46, as follows: I would measure the spaces occupied by the different packages, the two Spearmint packages in this case and the Doublemint package, by actual rule and pro rate the cost of the entire advertisement on that basis. By way of illustration, if my measurement would show that the picture of Wrigley's Doublemint package at the bottom and the picture of Wrigley's Spearmint package at the bottom are equal, and if my measurements would also show that the picture of

the Wrigley's Spearmint package in the girl's hand is one-fifth of the size of the picture of Wrigley's Doublemint package, I would charge six parts to Spearmint and five to Doublemint. I would not charge any part of the expense of that particular advertisement separately or to the general business, even though the word "Wrigley's" appears at the top of that advertisement in large and
4648 conspicuous type, because the advertising of an article like chewing gum is governed almost entirely by the appetite appeal of the consumer and that the consumer or the actual buyer is really interested in the product itself through its flavor principally and the appearance of the package, and so forth. In other words, that the name of the manufacturer is of very little value in the minds of the consumers.

In the advertisements that I saw, although the word "Wrigley's" appeared in common type, the packages appeared as well. In my opinion it would make no difference whatever whether the name "Wrigley's" in those
(3671) advertisements was in large type or in smaller type so far as pertains to the proper rule for distributing the cost of the advertisements.

4649 If, when the Wrigley Company inserted or used the advertisement, Larson Exhibit 46, which covers Spearmint and Doublemint, they were also making 10 or 15 other kinds of gum, none of which is referred to in that advertisement, I would say that particular advertisement would have no effect upon the sale of the non-mentioned gums, because there are only two definite gums mentioned in that advertisement. I cannot see how in any way the non-mentioned gums would be benefited by the advertisement of the specifically mentioned brands. From my knowledge of the gum business, I would say that just a certain amount of gum is chewed, that is to say, a person cannot chew more than one kind of gum at a time and therefore such brands as are most extensively advertised
4650 or brought to the attention of the public in other ways are the ones that benefit.

As to the necessity of a large advertiser of a given product continuing those advertisements or discontinuing them in order to maintain a profitable business in those products, I will say in my opinion it is absolutely essential to continue the advertising at a given rate almost continuously, in order to keep those brands before the public

and not allow the manufacturer of another gum or another product to come in and reap the harvest of the market previously created.

(3672) *Cross-Examination by Mr. Aldrich.*

The purpose of advertising specific brands or names is to identify those brands in the minds of the buying public. We want to identify them in the minds of the buying public in order to create the idea of superiority of quality of that particular product of the manufacturer whose name is connected with it.

4651 As to whether I think that a name should be adopted that describes the product, or should be a name that is exclusive and protective in its character, I will answer that from my experience, that we have always adopted a name, not necessarily describing the product, but one that is individual in character. We have done that in order to bring that particular name before the buying public as a product of our company. We have used the name of the Corn Products Company in connection with such names primarily to give the name of the manufacturer and in our advertisements to give the reader of the advertisement the proper address to which to send for our cook book which generally was a part of our advertisement. I would say that from my experience that these names have acquired little or no value in the minds of the consuming public.

4652 Assuming that a brand to which we have given a name becomes popular with the public and the Corn Products Company's name is identified therewith, I doubt very much that our customers come to know that brand as our brand. In my experience as an advertiser, I have knowledge of names of products that have become of great value in the estimate of the people who buy them. I would say that the names of brands, but not of firm
(3673) names, have been of great value in the estimate of people who bought them when they came to recognize or recapitalize a business.

4653 I would say that "Tiffany" has a standing in the minds of the buying public in connection with the jewelry business. I don't know how it has acquired that standing. I presume it is through the years of business that they have been established and the general character and con-

duct of their business. As far as I know, for a long period of years, the name "Tiffany" has been associated with the Jewelry business of the highest grade.

"Studebaker" has come to have a value because that is
4654 the name of a product. As far back as my knowledge of Studebaker goes, it has referred to automobiles. I could not say that before they manufactured automobiles they were manufacturing wagons and buggies. If they were, I would say that is a correct case of the value of a name referring to the particular product. The Studebaker name was used at the various times for those particular products, and always in connection with vehicles of some kind.

4655 Referring to Heinz's 57 Varieties, I should consider the name of Heinz as more of a brand than that of a firm name. I would say that Heinz has advertised "57 Varieties" so long that when you hear the name "Heinz" it is associated in the minds of the buying public with its product rather than as the name of a company or firm. I don't recall of any other examples of that kind in the national advertising field in the United States.

(3674) So far as it applies to the buying public, I will not admit that it is of value to a manufacturing company or firm, if the product or brand advertised is a good product and meets with favor, to have its name associated with it.

Another witness testified here the other day that Piedmont and Chesterfield cigarettes each built up its clientele who wanted it and nothing else. That same thing applies to products of a different character. I don't think with such a clientele attached to a particular product it is of any advantage to the manufacturing firm or the owner of the name to have its name connected therewith. My
4656 opinion is that the consuming public is governed by the brand of that particular product, and cares nothing about the name of the manufacturer.

I would say that so far as the buying public is concerned, a manufacturer of a particular product that has become widely known practically a household word, and whose name has been associated with such a product, would have just as great a difficulty in introducing a new brand as a new firm would have. When it comes to distributors, the wholesale grocers and retail grocers, then I admit that the firm's name has some value. The jobber is the first channel, the retailer the second, and the con-

4657 sumer the third, in large distributors, Providing the product was one of merit and the profit satisfactory in those cases, I would say that the old established manufacturer would have the advantage over the beginner who sought to market a similar product.

Wide publicity along with continued successful marketing of a product, the maintenance of the character of the product, and so forth, attains a high value. That is what each manufacturer, in the effort to extend his mar-
(3675) ket and keep up the character of his product is aiming at.

I would say in my experience I have known of many cases where the value thus attained was such that there were earnings much in excess of a reasonable return on the actual tangible assets of the firm as it was capitalized. It is a frequent occurrence.

4658 In my business experience I have not been a seller of merchandise as distinguished from advertised products. As to what course I would pursue if I desired to give a value to a name, or make a name known, such as Heinz's name has come to be known, I will answer that by saying that you can establish a business only through your advertising and sales efforts up to the present time and that it would be pretty difficult to say just what the
4659 future value of such a brand or brands would be. Assuming that the product is a good product, and that the company manufacturing it keeps its contract with its customers, treats them fairly and in all ways so as to have satisfied customers, if I wanted to give the product the position that Heinz has come to mean as connected with the Heinz products, I would not proceed along any particular line at all as an advertising man. I would simply continue to advertise that product, and not the firm's name. Heinz always advertised "Heinz's 57 Varieties". I would say that I would just continue to advertise products and not the firm name, because I believe the consuming public is interested in trade names only, and that in this particular case the name "Heinz" is a part of the brand and not the firm name.

4660 In the problem assumed, if I wanted to make the name of the manufacturer stand as Heinz's name does for its
(3676) products so that the moment the name was mentioned it would mean, as Heinz's name does, the Heinz product, I would simply continue advertising the product. That

answer is not dictated at all by the fact that I am here as a witness for the Wrigley Company in this case. I am basing that on my experience that I have followed in our business. I have never had the problem just stated before me in my experience as an advertising man.

4661 If I want to make the name of the manufacturer synonymous with the product which he manufactured, I would make it a part of the brand. That is the only way you could do it. I would make it a part of the brand by embodying the name with that of the product. I would embody it in the brand name itself, on the package and in the advertising. If I had that problem to solve as an advertising man with reference to the Wrigley Company, I would make our advertising read simply "Wrig-
4662 ley's gum" or "Wrigley's Spearmint gum." I don't know as I would consider the name "Wrigley's" as a part of the brand in the advertising of that company.

I have examined and am looking at Larson Exhibit 44. I would consider the word "Spearmint" in the arrow as the product. I consider the name "Wrigley's" there as the manufacturer's name.

4663 I don't know what the purpose of "Wrigley's" at the top of the page is, not being familiar with their idea of advertising. If I had the problem which you have submitted to me as an advertising man, as to whether I would make the name "Wrigley" or "Wrigley's" prominent, I would say it would be of little or no value to the consumer. I doubt if I could solve the problem of
(3677) making "Wrigley's" mean in his branch of business what "Heinz" means in his 57 Varieties as applied to food products, with any degree of success on account of the brands already having been established, and I make that distinction because from my experience, I have, and other people have, bought Spearmint and Juicy Fruit. I have heard people ask for Spearmint and ask for Juicy Fruit. Now, those brands to my mind are established in the minds of the public. I base my distinction purely on the fact that those products have been established and had a name and adding to them might tend to confuse
4665 the situation.

If I wanted to make Wrigley's name synonymous with his products so that whenever anyone said or heard the name "Wrigley's" he would know at once that it referred to gum products, I would not change the advertis-

ing here at all, if I were conducting a campaign for that purpose.

4666 Larson Exhibit 156 advertises the United Cigar Stores, Gillette, Durham-Duplex, Auto-Strop and Ever-Ready Gem Razors, and Wrigley's something. That, to my mind, has no value at all. It simply says "Wrigley's after every meal is good for you."

I would say that to me Wrigley's has been so extensively advertised by the expenditure during the history of that firm of $20,000,000 that to most people of ordinary intelligence the word "Wrigley's" on Larson Exhibit 156 would mean Wrigley's gum. I would not say

4667 it would mean that to most people. To the trade who had been handling that particular product, it would mean Wrigley's gum. I would say it would mean that to all jobbers handling the gum, and to a very large percentage of retailers selling the gum it would mean that. I believe

(3678) it would mean very little, if anything, to the consumer. I base my opinion on that, on our own products, Karo, Mazola and Argo. We have advertised Karo from 10 to 12 years, Mazola and Argo for the past five or six years. We distribute them through the jobbers, from the jobbers to the retailers and from the retailers to the consumers.

4668 Our work has to be done first with the jobber to get him to handle our products. We have to expend a large sum of money in advertising to do that. We induce the jobber to stock our products on the promise of assistance in his distribution, the promise of advertising. The jobbers handle the retailers. We reach the retailers indirectly. We have a corps of salesmen commonly known as specialty salesmen who sell our products to the retailers for the account of the wholesale grocer. Our accounting is to the retailers representing the product with a view of assisting the distributors who are above them and inducing them to handle the product.

4669 Our advertising has an educational value. By the word "educational" I mean instructing the consumer or the ultimate buyer of our product in the use of that product. The consumer is educated through the advertising to know the product. I said a few minutes ago, with reference to the Wrigley product, that the consumer would not know anything about it, because "Wrigley's" is a name, and I am talking about brands. I don't consider "Wrigley's" both a name and brands. There is no dif-

ference in my mind between our product and Wrigley's. They are both products going to the consumer with respective food appeals, and the consumer has been edu-
(3679) cated by advertising campaigns with reference to the products of the Corn Products Company as well as the Wrigley Company, only in the case of the Wrigley Com-
4670 pany by a much larger advertising campaign than we have ever given to the Corn Products Company.

I don't think that from this large expenditure of money in recent years, "Wrigley's" has come to mean to his business what Heinz's name means to his business, because I don't believe the publicity has been carried on in just the same way.

In our business we do not make an appropriation for annual advertising based on sales. Our advertising budget is fixed ordinarily by the management without any reference to sales.

4671 I do not think I could answer what I considered a reasonable appropriation when it is based on sales for advertising expense in a business that is well and ably conducted. I have had no experience in that matter and I have never made any study of advertising as to qualify me to express an opinion on that subject. Our advertising appropriation has been arbitrary each year.

I think the advertising of Wrigley's Spearmint and Doublemint would decrease the sales of Juicy Fruit based only upon my opinion that there is a certain consumption of chewing gum and that where one brand is consumed another would necessarily lose. I know that the three leading brands of gum manufactured by the Wrigley Company are Spearmint, Doublemint and Juicy Fruit, and are all of different flavors.

4672 I consider that advertising is indulged in to hold customers already made and to get new customers. I believe that in gum, as in cigarettes, the clientele will be estab-
(3680) lished for each flavor or kind. I would not say that advertising Spearmint would take away the customers that were addicted to Juicy Fruit, assuming that the brands receive practically the same amount of publicity. Such a case to my mind would be absolutely a choice of flavor on the part of the consumer.

4673 I have testified that through large advertising which is judicious and well calculated, brands come to have a great value. In my opinion it would take approximately a

million dollars over the period of one year to give a market value to a brand that was successful and had sales of large amounts. That ought to put the brand over.

If in this case $8,917,000.00 was received from Doublemint gum during the infringing period, and it cost to manufacture this gum during the infringing period $3,733,000. so that there was a gross profit exceeding $5,000,000, and if the Wrigley Company claims, under the method of apportionment which I have adopted, to have expended during the infringing period $2,900,000, in my opinion such an expediture, producing such results at such a cost, would give a value to the word "Doublemint."

4675 *Redirect Examination by Mr. Mayer.*

In answering the last question as I did, I assumed that the net result of the Doublemint sales during the accounting period has been to show a net profit. I never
4676 heard of a case of a manufacturer advertising a product which resulted in an ill will instead of a good one. If the Corn Products Refining Company advertised an animal food and the animals that ate it became sick, a
(3681) decidedly bad will would be created for the Corn Products Refining Company for that particular brand. Whether advertising is an advantage or disadvantage depends entirely on the product advertised, the quality of it.

When I answered Mr. Aldrich's question that the advertising that I have seen of the Doublemint gum might create something of value, I had only in mind that it might have been of benefit to the past sales, not that it would create some good will of value in the future. As
4677 to what value, if any, in my opinion the advertising of Wrigley's Doublemint which I have seen would have in the future, would depend to my mind entirely upon the amount of advertising continued, the quality of the product, and the taste of the public may change.

I consider that "Heinz's" is a brand name standing for "Heinz 57 Varieties," of various food products. Pickles and catsup would be two of those varieties as I recall the advertisement but I doubt whether it would be in the mind of the consumer. When the name "Heinz" is mentioned without anything more, to my mind it may mean either a pickle or a catsup.

4678 When I was testifying with regard to Exhibit 156, and said that I could not tell from what of Wrigley's it advertised, I meant to convey that I did not believe it meant any specific product in the minds of the ultimate purchaser.

I would say the conduct of a manufacturer advertising only his name without mentioning any product would not be of value in the sale of a specific product.

Referring to Larson Exhibit 156, no one, a consumer, a jobber, a retailer, or any one else, could say when Wrigley
(3682) advertised, or the person who is referred to by "Wrigley's" on the advertisement in question, that he meant to get people to buy Spearmint gum or Doublemint gum or Juicy Fruit or P. K's. or any one of the 15 or 20 brands of gum that the Wm. Wrigley Jr. Company manufacture.

4679 Where a manufacturer advertises a particular gum, in order to get any benefit from such advertisement, I will say from my experience that it is absolutely necessary that the manufacturer furnish a product that meets the public favor and gives a good service, otherwise the advertising would go for naught.

Recross-Examination by Mr. Aldrich.

I understand that the Wrigley Company continued the sale of Doublemint after the end of the infringing period, viz., November 12, 1918, advertising under a different label to make it an entirely different package. It is my understanding that in 1918 they changed the color scheme of the wrapper.

During my original testimony I stated that I considered
4680 the name "Spearmint" a brand name. By a parity of reasoning, I consider the name "Doublemint" and "Juicy Fruit" likewise brand names.

(3683) New York City.

4681 Tuesday, October 17, 1922. 10:30 A. M.

ALLEN L. BRENNER, called as a witness on behalf of the Wm. Wrigley Jr. Company, being first duly sworn, on direct examination by Mr. Mayer, testified:

My name is Allen L. Brenner. I live at 637 East Third Street, Brooklyn. I have lived in or about New York City for the past seven years. I am secretary of Kirkman & Son, who are engaged in manufacturing soap and soap
4682 products at 215 Water Street, Brooklyn. That institution has been in business since 1837. I have been secretary of that concern since February, 1921, and have been connected with it since May, 1915. I started as a cost accountant, and had that position for four years. Then I was assistant sales manager about six months. Then I was office manager for a little over a year. Then I became secretary.

As a cost accountant my duties were to compile records of manufacturing, selling and advertising. As assistant office manager my duty was to act as special investigator for the office manager. I went into the various departments of the company and brought back information to
4683 him. As office manager my duties were to supervise the work of such office departments as the cost department, the research department and other office departments such as stenographic, billing, credit, filing, and so forth.

Kirkman & Son have issued coupons. I should say for more than 20 years. Kirkman & Son began to discontinue the issuance of coupons on some of their packages
(3684) in 1919, and finally stopped in May, 1920. On August 16, 1919, we issued our first packages without coupons. I will explain the method by which Kirkman & Son issued coupons.

Each one of our four products was in a container or
4684 wrapped in a wrapper. The two products which were wrapped in paper wrappers had some place on the wrapper a square which was known as a coupon. Those were to be cut out by the consumer and turned in to us for redemption. The other two packages, which were not wrapped with a paper wrapper, but were in containers

had around this container something, in the form of a square, which was known as a coupon and which was to be cut out by the consumer and sent in to us for redemption. I have a sample of those four different kinds of coupons.

(The witness produced the samples in question, and they were offered in evidence by Mr. Mayer as Wrigley Exhibits 30, 31, 32 and 33. Mr. Aldrich objected to the offer on the ground of incompetency, immateriality and irrelevancy. The objections were overruled, and said coupons were received in evidence and marked Wrigley Exhibits 30, 31, 32 and 33.

4686-4689 (Wrigley Exhibits 30, 31, 32 and 33.)

(3685) I will explain what kind of a document Wrigley Ex-
4691 hibit 30 was cut out of. There was a wrapper containing the name of the Company and the name of the product which was to be wrapped inside of the wrapper. This was to be placed, in the manufacturing department, around the product at the time it was finally put forth for consumption. I have brought a sample of that wrapper here.

(Mr. Mayer offered the said wrapper in evidence. Mr. Aldrich objected. The objection was overruled. Said wrapper of Kirkman's Borax Soap, so offered, was received in evidence and marked Wrigley Exhibit 34.)

4691 (Wrigley Exhibit 34—outside wrapper.)

4692 (Wrigley Exhibit 34—inside wrapper.)

(3686) Wrigley Exhibit 30 was cut out of a wrapper similar
4693 to Wrigley Exhibit 34.

Wrigley Exhibit 31 was cut out of a paper wrapper for another product manufactured by Kirkman & Son. The product was Floating soap. The wrapper around Floating soap was similar in general form to Wrigley Exhibit 34.

The coupon marked Wrigley Exhibit 30 was taken from a wrapper similar to Wrigley Exhibit 34 which was wrapped around Borax soap. That appears from Wrigley Exhibit 34.

Exhibit 32 was cut out of a pasteboard carton, which, when sealed up, contained a package of Kirkman's Soap Powder.

4694 Exhibit 33 was cut out of a paper wrapper which was intended to go around a pasteboard container, the pasteboard being sealed at the top and bottom. Kirkman's

Cleanser was in the box. Exhibit 33 was on the outside of the pasteboard. It had certain paste spots which kept it from coming off. It was necessary, in order to get any of the coupons, Exhibits 30, 31, 32 or 33 to cut them from either the pasteboard or the paper wrapper.

In the case of the soap wrappers, it was necessary first to remove the wrapper off of the cake of soap, taking care not to mar the coupon, and then with a pair of scissors, or some other appliance, or in some way cut the coupon out of the coupon, thus saving the coupon. The coupon itself is a small part of the wrapper itself. This explana-
4695 tion applies to Exhibits 30, 31, and 34.

In the case of Exhibit 32, the soap powder carton itself
(3687) was printed with the coupon square being a part of the outside printing material on the carton, the coupon was an integral part of the carton, so that after the carton was empty the consumer would take a pair of scissors or some other instrument and actually punch through the carton and cut around the carton and save it. In the case of Exhibit 33 the paper wrapper which extended all the way around the package had to be broken at some place where the coupon did not show, or detached in some way so that they could get some sharp instrument behind the coupon and then follow around the coupon line and cut that out.

Thirty-three was not a part of the cardboard. There was a cardboard cylinder, and the wrapper went all the way around the cardboard cylinder with paste spots to keep it from coming loose. These three products that
4696 contained these cartons were sold to the ultimate consumers through the retail grocer, as a general rule. Ultimate users were housewives, laundresses and children or any one else who did the family marketing. Until we started to quit issuing these coupons in August, 1919, coupons similar to the four I produced here were put on all of the four packages I have described. That was begun more than 20 years ago.

The price which the ultimate purchaser paid for one of those packages containing one of these coupons varied considerably in different years, but approximately 4-1/2 to 7 cents per package was the price to the retailer.
4697 That's what the customer had to pay.

The holders could redeem the coupons in merchandise from us, which they would have to buy at about the rate

(3688) of one-quarter to one-half cent per coupon. As to whether they could redeem these coupons from anybody else other than our concern, I will say coupon brokers in certain cases would buy them. I know of no other instance outside of that. We had a cash rate on the coupons which varied from time to time. Those coupons had been redeemable in cash, to my knowledge, during certain periods. I am not able to state as to the general policy of doing that. They were redeemable in cash during more recent dates. I should say the cash redemption value of the coupons was 25 to 30 cents per hundred. That would be from 2-1/2 to 3 mills per coupon. I mean that the retail value of the merchandise given for the coupons was from one-quarter to one-half cent per coupon.

The language on the back of Wrigley Exhibit 30 was an effort on our part to acquaint the consumer with the stations at which he may redeem these coupons in merchandise. The same thing is true as to the printed matter on the back of Wrigley Exhibit 31. The customer in cases of actual redemption brought the coupons in to any
4699 one of our premium stores, which were the redemption stations, and called for the premium that she desired, left the coupons and took away the premium.

We had a catalog of merchandise from which the holder of the coupons could make a selection. They showed the number of coupons she needed for the purpose of procuring the various articles shown in the catalog.

Exhibits 32 and 33 state that the coupon is redeemable "subject to conditions and restrictions in our catalog." I
(3689) have here one of the catalogs that was issued in the due course of Kirkman & Son's business. The catalog which I have before me was used in connection with this coupon business that I have described. It is what is known as our 1915 catalog. We changed the catalog
4700 whenever it was necessary to change values on any premiums. We found it necessary to change our catalog on account of the increased price of merchandise. That was necessary during what is commonly known as the war period. It was customary for us to issue notices by means of the catalog of the necessity to increase the prices. We adopted other means.

We made an effort to acquaint our customers with the

conditions under which we were operating every way we could.

I have here a sample of a notice we issued in that connection. It is a notice to the customers that on account of the increase in cost to us from the manufacturers, we had been compelled to raise coupon values on many pre-
4701 miums listed in previous catalogs.

(Mr. Mayer offered the notice in evidence. Mr. Aldrich objected. The objection was overruled, the master stating that all testimony along that line was taken under objection. The notice was received in evidence and marked Wrigley Exhibit 35.)

(3690) Said Wrigley Exhibit 35 says that on account of the
4702 increase in cost, to Kirkman & Son from the manufacturers, Kirkman and Son have been compelled to raise the coupon values of many of the premiums listed in this catalogue, and that the raises are in fact just enough to cover the additional cost to Kirkman and Son and that because of present conditions, the coupon values of Kirkman and Son's premiums are subject to change without notice.

(3691) We made every effort by word of mouth and every
4703 way we could think of to acquaint our customers with the change in value of the coupons. The premium clerks in the premium stores discussed it with customers who were bringing in their coupons. The conditions and terms under which the coupons were redeemed are shown in the catalogs that were issued from time to time. Our catalogs showed the redemption values of the coupons in merchandise.

Pages 18 and 19 of Kirkman & Son's 1915 catalog that I have produced here fairly and accurately represent pictures of Kirkman's Borax Soap package and of the coupon that was part of the wrapper, and also a correct picture of Kirkman's Scouring Powder and of the coupon that was part of the wrapper, and of Kirkman's soap powder and of the coupon that was part of the wrapper around it, and of Kirkman's soap and of the coupon
4704 which was part of the wrapper around it. Just to straighten out the trade names, the scouring powder is sometimes known as kleanser and the white soap is known as floating soap.

(Mr. Mayer offered in evidence Kirkman's premium catalog for 1915. It was received in evidence and marked

Wrigley Exhibit 36, pages 18 and 19 being inserted at Mr. Mayer's suggestion in the record because it illustrated visually the testimony given by the witness.)

4705 (Wrigley Exhibit #36.)

(3692) We distributed catalogs in general form similar to
4706 our 1915 catalog except for the values on merchandise, through the entire period. Redemption of coupons was made to a very large extent in person from our premium stations and to a smaller but considerable extent by mail direct to our Brooklyn office.

I have made a compilation as to the percentage of redemption of these coupons from our records covering the period from 1911 to 1921, inclusive. I have also brought information as to 1922, up to approximately the middle of the year.

(Mr. Mayer then asked the witness to state, beginning with 1911, what the annual percentage of redemption was to the annual issue of coupons during those years. Mr. Aldrich objected on the ground of immateriality, irrelevancy and incompetency, and on the ground that it was not shown that the experience of the manufacturer in question in its product was at all analogous to that of the Wrigley Company. The master overruled the objection.)

4707 In 1911 we redeemed 73 per cent of the coupons issued; in 1912, 70%; in 1913, 69%; in 1914, 82%; 1915, 75%; 1916, 69%; 1917, 82%; 1918, 54%; 1919, 55%; 1920, 273%.

Since 1920 the percentage cannot be computed on account of no issue. There have been redemptions in 1921 and 1922. The coupons which have been issued in the manner to which I have testified are still coming in at
(3693) the present time. Approximately a million came in
4708 to the middle of 1922. More than a billion of those coupons have been issued beginning with 1911 to the present time. The percentage of coupons redeemed, by our concern in and since 1911 to the present time, as compared to those issued during the same period of time, is 74%. In 1917 the number of coupons redeemed was 82% of the number of coupons issued in that year. In 1918 the number of coupons redeemed fell to 54% of the number of coupons issued in that year. We issued a few more coupons in 1918 than in 1917.

4709 (Mr. Mayer then asked the witness whether he could account for the fact that the redemptions in 1918 were

only 54%, whereas in 1917 they were 82%. Mr. Aldrich objected. The objection was overruled.)

The witness continued:

Our opinion was that there were two reasons for this, one the increased coupon valuations placed upon the merchandise, and the other the fact that more people had money possibly to buy what they wanted. By "increased coupon valuations placed upon the merchandise" I mean it was necessary for us to get more of these coupons for the same article during this high cost period than it had been previously. In other words, the holder of the coupon got less for his coupon because the merchandise required more coupons. The situation was similar in that respect in 1919.

4710 We began to quit packing coupons August 16, 1919, and we completely quit in May, 1920. At or about the same time in certain cases we sent out a written notice that we
(3694) discontinued placing our coupons on the wrappers. I have a copy of such a notice.

(Mr. Mayer offered in evidence the said notice consisting of four pages. It was received in evidence and marked Wrigley Exhibit 37.)

4711 The first page of said Wrigley Exhibit #37 is a statement by Kirkman & Son saying that they will not issue a premium catalogue, as they have discontinued placing the coupon on the wrappers and labels of their various products, and assuring their customers that all coupons will be redeemed and asking that the coupons be mailed to Kirkman & Son, Brooklyn, New York.

(3695) (The following three pages of Wrigley Exhibit 37 contain a list of premiums and number of coupons required therefor.)

4712 I testified that the percentage of redemption in 1920 was 273% of the number of coupons issued in that year. I account for that increase of redemptions in 1920 to 273% as compared to only 55% in 1919 by the fact that more coupons were coming in than in the two previous years and to our decreasing issue. We only issued 22,430 coupons in 1921. I regarded them as negligle when I testified we quit in May, 1920, issuing coupons. The cash redeemable value of the 22,430 coupons would be about 50 or 60 dollars. There was nothing on the coupons that were issued by our concern, or in the catalog, that made it necessary for the holder of the coupons to present them

4713 for redemption within any given or specified period, as far as I know. That is, not to my knowledge. I do not know what was done previous years.

4714 New York City.

Tuesday, October 17, 1922. 2:00 P. M.

The first I heard of this question of coupons in connection with the present case is when we received a letter from the Wrigley Company, I should say two or three months ago, asking us for our experience in the coupon and premium business. The first persons I met in that
4715 connection were Mr. Lane and Mr. Shields, about a month ago. Prior to that time I had not met any officer or employe of the Wrigley Company.

The examination of the books upon which my testimony is based was made by our office manager and cashier and
(3696) Mr. Kirkman, our president and myself. Our cost accountant may have worked on that outside of the men I just mentioned.

The tables or compilations upon which my testimony purports to be founded were taken direct from our own records which are compiled in our cashier's office by one of the gentleman just mentioned. Those records are actual compilations taken from our accumulation of figures made up each year in the cashiers' department. They
4716 begin with 1911 because before that time the records had been kept in a separate office which we called our premium office which was in a separate location from the general office, and they were not tied in directly with our general records of the business. They were kept as a separate outside tabulation. Our premium manager kept that tabulation. He was department head of Kirkman & son. Those books were kept in the premium department. When I came with the company the premium department was down on Washington Street in one of Robert Gear's buildings. He needed that building and later they moved up to the corner of York and Washington Streets, and they were there for some time during the recent years up until the time when we gave up that activity.

The working papers on this statement which has been offered in evidence, and upon which my testimony is
4717 based, are in our general office or may be some in our

premium office which is at 303 Bridge Street. There may be some of the working papers down at 303 Bridge Street, there probably are, but the reports come regularly from 303 Bridge Street up to the general office showing the tabulations and other tabulations are made there.

There were no special tabulations made for this in-
(3697) quiry at all. I arrived at the number of coupons issued in 1911 from the summary that was made up for our board of directors' meetings. That was made up to 1918 when I first saw the book, four years ago. I will explain how the tabulation was made at that time.

The reports would come in each month from the premium department showing the number of each premiums redeemed each month—or showing the number of coupons, I should say, redeemed each month. Those ran on for a year, and at the end of the year were summarized and placed in this directors' book. That is also true so far as my knowledge goes of every year, from 1911 to 1918, inclusive. The statements showing the coupons issued were taken directly from the delivery reports from the traffic department. That was taken care of in the cashier's department. He gets a report each month from the traffic department showing the delivery of so many cases of each product, and he took from that the number of coupons that were on each package in that case and multiplied that out and got the total coupons issued. The book showing that may be in loose form, but the records are still in existence.

4719 As to whether our books show the outstanding coupons when the change was made from the redemption manager's department to the office of Kirkman & Son on the 1st of January, 1911, I will say we had no way of arriving at the number outstanding or supposed to be outstanding in consumers' hands. There was no estimate made of that. There were a large number outstanding.

As to whether there are any serial numbers or anything to indicate at what time the coupons were issued,
(3698) I will say during the latter years there were a number of coupons that were issued without any designating serial. During previous years I think there were some that did have something which may have designated their age or the time they were put out, but whether that was common practice or whether it was just the judgment of the minute on the part of the person who ordered them

printed, I am not sure. Some of the coupons issued during my experience with the company bore serial numbers, or something to indicate when they were issued, and some did not.

Some of the coupons have the date of 1914, 1915 or 1916, somewhere along there. That was before I had any direct
4721 connection with this compilation work, but in recent years since I am directly connected with this, and have direct knowledge of it, we put them out without the date on. I referred to the date as the serial number.

When I answered Mr. Mayer's question I understood that the redemptions which I mentioned for each of the years as stated by me was limited to coupons issued the same year that the redemption was made, and did not embrace any coupons that had been issued prior to that year. I will state how we can tell when they were issued.

We figured the number of coupons that went out on our deliveries for a given month. We figured against that other coupons which came in for redemption which may have been as of any age, we did not know. I did not want anyone to understand that when I spoke of a given percentage in any given year that that percentage applied to the coupons issued in that year. I am not able
4722 to state what the total of outstanding coupons was at the beginning of the peroid. That is, in 1911. In 1911
(3699) we issued 104,326,272; in 1912, 122,563,985; in 1913. 135,443,594; 1914, 127,890,935; in 1915, 140,613,857; in 1916, 156,081,915; in 1917, 124,832,730; in 1918, 125,007,-075; in 1919, 114,059,348; in 1920, 34,812,865; in 1921, 22,430.

I said that we had redeemed about a million up to the middle of 1922, and during 1922 we put out none.

I do not know whether manufacturers of washing soaps and washing powders generally throughout the United States use coupons with their wrappers or in connection with the sale of their soaps. I know some do at the present time. I am not familiar what the practice was prior to the war period. During this period we sold soap in cartons and boxes. We distributed by direct delivery to retail grocers, delivery to central jobbing houses who later deliver to retailers, direct delivery to chain store warehouses which later deliver by their own truck to their stores, and we also deliver direct to chain stores. Each chain store has a central location that they will get

their goods from for all their stores from different manufacturers. Their truck will start from there and make the rounds of their stores. We also delivered to the
4725 individual stores of the chain stores.

I know that other manufacturers of washing soaps and powders use the coupon system as the method of advertising and advancing the sale of their soaps. I do not know of any large manufacturer of washing soaps and powders that has not been practicing that way of making sales.

The expense of these coupons was carried on in the books of Kirkman & Son as an advertising expense. We
(3700) had a general advertising account into which the premiums and redemptions were charged as an expense each month or each quarter or whenever we closed our books for profit. The premium store in itself was not a profitable thing. Our premium stores were a straight
4726 expense.

Books were kept with the premium department only as far as outgo of money was concerned, they had no income. They were not credited on the books with the
4727 coupons redeemed. They were charged with the merchandise as it was given away to the consumers. Previous to 1918 it was at the price which the consumer took it. In the year 1918 we changed our method slightly, and set up arbitrarily a figure each month at the time of issue looking forward to a possible redemption, and that was used as a reserve out of which we could redeem later, but that was not of particular value because we went out of the premium business a short time after that. This general method of attaching coupons to the wrappers of washing soaps and powders was adopted to stimulate the consumer sales. It is a method of adver-
4728 tising. All classes of people bought washing soap and powders. Those who bought included housewives, laundresses who do the household washing, and children or any other member of the family who does the family marketing at the grocery store.

I do not know of any toilet soap manufacturer putting coupons with the toilet soap. I have never had an opinion as to the difference between the methods adopted as to the one kind of soap and the other. Aside from redeeming coupons, Kirkman & Son have discontinued the coupon
4729 business. The coupon is still a promise to pay on our

part. We reached this conclusion at the time when the
(3701) materials from which we did our manufacturing were restricted during the war period. At that time we did not have all of the business that we could do with the materials that we could obtain.
(3702) At the time we discontinued the use of coupons we
4729 were not doing all the business we could do with the materials we could obtain. We could fill all the orders
4730 we had and could have filled more. There was no connection between the restriction of material, cutting down our production and the taking off of the coupon. They were just concurrent in dates. The restrictive provision of the Government during the war increased the price of our product to the consumer. The increased price of our article decreased the value from production. The restriction upon materials did not decrease the extent of
4731 our production. The redemption for each year beginning with 1911, and concluding with the present time, were 1911, 76,160,581; 1912, 85,309,581; 1913, 92,792,817; 1914, 104,670,034; 1915, 104,851,896; 1916, 108,347,498; 1917, 102,484,330; 1918, 67,142,312; 1919, 63,210,085; 1920, 95,174,009; 1921, 8,856,061; 1922, the first part was 905,867. We put out in the year 1920 23,812,865 coupons, we redeemed in that year 95,174,009. The percentage is 273. We have a few customers that were willing to pay twenty-five to thirty cent a hundred in cash for such coupons as they would bring us for re-
4732 demption. We did not pay that rate generally. We set a coupon valuation figure on merchanise which represented a retail price to the consumer, in such a ratio that it would make the coupon worth to her from a quarter to a half a cent, considering that she was buying merchandise at a retail store. A coupon was worth a quarter to a half a cent to the consumer as compared to what she would pay at the retail store. Each coupon was the same value. The different forms of merchandise were worth different values at different times of the year. Holidays were always a special time, big values then on certain merchandise. We gave a greater number
(3703) of coupons near the holiday season. We put special premiums on then which we would not run during the
4733 year. We bought our merchandise at wholesale prices. Our redemption stations do not carry any other merchandise that the coupon holder could obtain by sur-

rendering coupons and paying the amount of cash. We discontinued the coupon system because we made a quality soap, the highest quality we can make, and we could not continue to put the quality into the soap and still give the premium along with it. We have discontinued our premium houses so that we are entirely out of the premium business with the exception of such outstandng coupons as we have. We have no plans of
4734 re-entering that field in any form. We have not gone into the United Sharing Coupon System. We are conducting our advertising now through car cards, posters, billboards, and we continue the use of sampling and motion pictures. Wrigley Company has no connection with our company through common ownership or common stockholders. The cost of premiums, possibly to a small extent, had something to do with our discontinuance of coupons. That was not the reason for their discontinuance.

Redirect Examination by Mr. Mayer.

I have not now or ever had any interest in the Wm. Wrigley Jr. Company. My company has no business
4735 dealing with the Wm. Wrigley Jr. company. The persons to whom we paid twenty-five cents to thirty cents in cash per hundred coupons were the persons who are known in the trade as "Coupon Kings". I don't know the real name of them, coupon brokers, I should say, ought to go in the record. They let it be known to consumers who are saving coupons that they will give any one cash for coupons of any manufacturer that has more or less general distribution of his coupons, and rather than save up enough to get a premium to go through the
(3704) formality, or whatever reason that they have for do-
4735 ing so, they go to these coupon brokers and take the cash equivalent rather than the merchandise from the manufacturer. I said that the retail purchaser of our soap turned in the coupons to us for merchandise, worth at retail value from one-quarter cent to half a cent per
4736 coupon, and at holidays we gave some extra inducement. We never gave but one coupon with each package. The particular merchandise at times changed the value of the coupon from a quarter of a cent to a half a cent. One article of merchandise would have coupon

values which would place that in the quarter cent class. At holidays other merchandise would have coupon value which would put it in the half cent class in certain classes. In other words, they would reduce the price of the merchandise around the holidays. The idea behind it all was to get the people to thinking in terms of gifts, holiday spirit, and getting your coupons redeemed and starting in on a new year.

(3705) I said that the reason for quitting the issuance of coupons was because we could not continue giving them and maintain the quality of our product. I mean that
4737 the giving of the coupons incurred too large an expense to our concern to justify maintaining the quality of the soap at the price at which we are selling it.

Beginning in 1918 we started to set up a reserve on our books on account of the coupons. We tried to make that reserve include the cost of the merchandise plus the store rents, salaries and other incidental expenses of redemption.

That was not in connection with the returns for income tax and excess profits tax. The fact that 1918 showed a falling off in redemptions made it necessary to allow for the ones that were going to come in that did not.

4738 The chain store organizations were the best customers for our product. The ordinary trade was our best customers. In our advertising we try to reach every consumer of soap. Now everyone who consumes soap is a potential customer of ours. The large users of washing soap are the housewives who do their own washing or have laundresses come to the house. The average size purchase by the consumer would be two or three bars at a time. By a bar I mean one of these packages, each of which has one coupon and which sells for from 4½ to 7
4739 cents per package or bar. Each purchase will run from one to say half a dozen bars.

(3706) (New York, N. Y.)

4740 October 18, 1922. 10:30 A. M.

HARRY C. BRINE, called as a witness on behalf of the Wm. Wrigley Jr. Company being first duly sworn, testified on direct examination by Mr. Mayer:

My name is Harry C. Brine. I live at 21 Green Street, Somerville, Massachusetts, a suburb of Boston. I have lived there about 8 years. At the present time I am general manager of the Merchants Legal Stamp Com-
4741 pany. Its business is the issuing of trading stamps and its principal office is located at 453 Washington Street, Boston. It has been in business continuously since 1904. I was one of the original incorporators of the company. In 1912 I severed my connection with the company and in 1913 I became general manager. I have been a director in the company and a stockholder in the company since the early years of the company. I have been connected with its management from the time of its commencement to the present time with the exception of about one year, and have been geenral manager since
4742 1913. The company was incorporated in 1904. I was a director of the company up to 1912 but not since.

The trading stamp is a ticket given to a customer as a discount for their payments generally on cash sales. It is a ticket that always has a redeemable value, sometimes
4743 in cash, sometimes in merchandise.

The trading stamps were in Boston prior to the organi-
(3707)zation of this company. A number of Boston merchants were dissatisfied with the way the trading stamp business was conducted in Boston and formed a company of their own called the Merchants Legal Stamp Company. The stockholders were all men who gave stamps to their customers, and we also sold the stamps to other stores that were not connected with the company. The distbursements of the earnings of our company are made in the usual manner, as, if there are any profits to be disbursed among the stockholders, those profits are divided according to the percentage of purchases of stamps pro-rata among the stockholders. In other words, a stockholder who does not give stamps or ceases to give

stamps would be expected to surrender his stock in the company, and if he did not, he would receive no income from his stock.

4744 We sell our stamps at $2.50 a thousand to all of our customers, large or small. We redeem them in cash for $2.00 a thousand. A customer may redeem any quantity. If she only has five cents worth, she can get five cents for them. They may be redeemed in any of our stores which give stamps. Some of the stamps we redeemed at $2.175 per thousand.

We sell our stamps chiefly to drygoods stores, department stores, grocery and provision stores. That covers by far the greatest portion of our business.

The territory in which our customers do business, speaking generally, is greater Boston or the eastern part
4745 of Massachusetts. For some years we sold stamps outside the state, some in Providence and surrounding territory. For customers we have about 2,000 stores. Some
(3708) were chainstores. That would mean a little less than 2,000 customers. In other words, there were about that number of places at which our stamps were handled.

Our customers could return the stamps that they have redeemed for their customers in cash and get $2.00 per thousand, or, for the stamps that they redeemed for their customers in merchandise and get $2.175 per book, containing 1,000 stamps.

The merchants who buy our stamps are exclusively
4746 retailers. They contract with us to give one stamp with each 10 cents represented in the purchase price to their customers, excepting on double stamp days when they may give two stamps for each 10 cents represented by the purchase price.

Many of the stores advertise one day each week to give double stamps. Such days are called "Double Stamp Days".

The persons who get the stamps with their purchases from these retailers are called stamp collectors. A collector is a person who goes into a retail store of one of
4747 our customers and purchases goods and gets with each 10 cent purchase one of our trading stamps, except on double stamp days, when they may have two stamps with each 10 cent purchase.

In the hands of collectors our trading stamps have a cash value of two mills or a fifth of a cent, the same

value as the Wrigley gum wrapper. A collector may get merchandise for a full book of stamps valued at $2.50 in any of the dry goods stores. He cannot get groceries or provisions for a full book of stamps at the $2.50 rate. A full book of stamps means 1,000 of our stamps pasted in one of our books.

(3709) By one of our books I mean a blank book in which
4748 the stamps are to be placed, marked "Legal Stamp Book" on the outside. These books are issued by the Merchants Legal Stamp Company. If the book is full the collector has the option to either exchange the stamps for cash or for merchandise. If the book is not full he can only exchange it for cash. If a collector has a full book of a thousand of our stamps and wants to buy merchandise, she goes to any one of our stores selling dry goods and so forth. She cannot get the merchandise valued at $2.50 in the grocery and provision stores.

If the collector wants dry goods for a full book of our stamps she goes to any one of the dry goods stores that have contracts with us to get the stamps. Generally if she goes into a store that does not handle our stamps she cannot exchange the stamps there. There are one or two stores however which are exceptions where she
4749 can do that. Those are rare exceptions. In other words, we expect our stamps in the hands of collectors to be redeemable only by our customers.

A collector can turn in a full book of a thousand of our stamps in payment for merchandise as if it were $2.50 in currency. That is to say 1,000 of our stamps will buy $2.50 worth of merchandise at retail value in one of our customer's stores. That is with the exception of groceries or provisions.

If the collector does not want dry goods but wants groceries, he will take the book to the grocery store and turn it in for $2.50 in cash and buy his groceries. He can get
(3710) cash at any of the stores giving out stamps.

4750 We had customers in and near Providence from 1907 to 1910. I am not sure of the exact date. We had considerable business in Providence about 1907 and 1910, as I recall it, and we had a very small business in Providence up to 1913 or 1914. About that time we discontinued all business outside of Massachusetts.

Speaking roughly the business of our company has

been confined to a radius of about 50 miles around Boston.

Most of our stamps for a number of years have had what we call a void date on the stamp. The sample I have
4751 before me reads "Void after January 1, 1925." These stamps were issued in 1922. The reason for putting the void date on was that for some years there has been adverse legislation brought up by various State Legislatures, and our company wanted to have a fixed date on the stamp after which they would feel they had no liability for outstanding stamps in case of liquidation, and that date being two years or more after the stamps had been issued, the last of the stamps. The void date appears on stamps that have been issued for some years past, but we have never taken any notice of the void date, and have always redeemed all the stamps that were presented to us regardless of that date.

I now have before me a stamp of series number 22. It is one issued in the due course of my company's business. This large figure "22" in the center of the stamp would indicate that it was printed for the purpose of being dis-
4752 tributed in 1922. It might be possible that before the
(3711) lot that we had printed was exhausted some of them might go into 1922, but in buying stamps, for several years past, we have endeavored to buy the quantity that would fill out the year, and change the serial number to correspond to the year that we issued it.

We have employed from the beginning means by which we can identify our stamps as to when they were issued by our company. We started with a stamp without any number and then concluded that we would discontinue that series or style and number the stamps, so we called the one without any number series 1, and the next lot of stamps we bought we changed in appearance—I am not sure that it was marked No. 2 now, but afterwards we had marked 3, 4, 5, 6, 7 and so forth, and in 1915 we started to number them to correspond with the year in which we expected to distribute them.

I have before me one of the books printed for the col-
4753 lectors of our stamps. That type of book has not always been issued by our company but it is the same type of book that we have issued for several years back.

I have here several of the trading stamps that are now being used and issued by my concern.

(The witness then pasted in the book three of the trading stamps.)

Those trading stamps are, generally speaking, of the type that have been used by our company since it has been in business.

(Mr. Mayer then offered the said book in evidence, including three stamps just pasted in the book as Wrig-
(3712) ley Exhibit 38. Mr. Aldrich objected on the ground of incompetency, immateriality and irrelevancy and on the ground that the business carried on by the witness'
4754 company bore no analogy to the Wrigley trading stamp or profit sharing coupon transaction. The objection was overruled, the master stating that it was understood that the objection stood to all testimony on that subject.)

(The said book with the stamps pasted therein, so offered, was received in evidence and marked Wrigley Exhibit 38.)

4754½ (Wrigley Exhibit 38.)

(3713) We have kept very careful records of the number of
4755 stamps we have issued and the number of stamps we have redeemed. That record shows month by month when the various stamps issued by us were issued and when the redemptions were made.

At the request of the Wrigley Company I have prepared a copy of those records so that I can inform the master the extent to which our company issued stamps during various periods and the extent to which it redeemed stamps during the same period.

The Merchants Legal Stamp Company first began to issue trading stamps April 11, 1904.

It issued the first series between that date and August
4756 18, 1905. It issued series No. 2 from August 19, 1905, to April 20, 1906. Series One was a stamp which we first issued April 11, 1904, and quit issuing August 18, 1905.

4757 Referring to the particular memoranda I have before me, I will state what I had to do with its preparation. We have a certified public accountant who audits our books now once every three months and for a number of years every month, and he prepares a report for the company and it was from his reports to the directors of the company that I took these figures, the reports that he prepared. Our company keeps in the due and ordinary course of its business books or records showing how many

stamps it isues or sells and how many stamps it redeems. Those books are relied upon by my company in its business. That has been the fact ever since my connection
4758 with the company. As general manager of the company, I have had occasion in the discharge of my duties to refer to those books from time to time. And I have relied upon those books in the discharge of my duties as
(3714) general manager. Those books are correctly kept so far as I have any reason to know. I suppose some errors have crept into those books the same as anything that one relies on humans to do. I know that there is in one case an error in the sheet that I prepared for the Wrigley Company, as to the books. I might also say that we have
4758 one series of stamps that is credited with having redeemed more stamps than we issued. That was series No. 8. Outside of that I have no reason to suppose that there are any errors in those records. I have no reason to suppose that there was any error that would change the figures materially. I have had occasion to use those records in the discharge of my duties as general manager of the Merchants Legal Stamp Company from time to time.

From my knowledge of the business of the Merchants Legal Stamp Company I am in a position to tell the master what the percentages of redemptions have been of the various issues of stamps by my company approximately.

I can tell accurately or approximately what the percentage was of the redemptions by my company to the stamps issued by it during the entire time that it has been in business.

4760 (Mr. Mayer then asked the witness what that percentage was. Mr. Aldrich objected on the ground that the books were not per cent. The objection was overruled.)

The per cent of total redemptions to total issues is over 93 per cent. Some of the first issue put out by my company between April 11, 1904 and August 18, 1905, are
4761 still coming in for redemption, in 1922. They have been
(3715) coming in right along from the time they were first issued up to the present.

We issued a new series at intervals of about once every twelve months since we have been in business. We issued the second series from 1905 to 1906, sometime in 1906. The stamps of the second issue are still coming in

and have been coming in right along since we quit issuing them in 1906.

4762 The third series was issued from sometime in 1906 to sometime in 1907. Trading stamps of the third series are still coming in to the company for redemption and they have been coming in right along from time to time since we quit issuing them. Stamps of the remaining issues put out by us annually are all still coming in. Stamps of all the various issues put out by the company have continued to come in from time to time up to the present time. One hundred per cent. of the first issue of stamps have not come in for redemption. Over 99 per cent of
4763 the first issue has come in for redemption, but this requires a little explanation.

The collector's book that we originally used contained only 990 spaces to paste the stamps in, and just how long we used those books I do not recollect, but we treated a full book of 990 stamps as though it contained a thousand, using a thousand as a unit. We also, early in the history of the business, gave some free stamps away, and the first item, the book, being 990 stamps instead of a thousand, so far as those books were issued would change that figure of over 99 per cent. In arriving at the 99 per cent we
(3716) treated that book as if it had a thousand in it.

The stamps of the first issue, issued between sometime
4764 in 1904 and until sometime in 1905 are still coming in.

I have prepared a memoranda from which I can state, either accurately or approximately, what the percentages were at different times of the various issues of our stamps. I have that memoranda before me. Without referring to the memoranda I cannot give the quantity of stamps issued by my company annually and the quantity of the annual redemptions.

The approximate number of trading stamps that my company has issued from the time it commenced business down to February 28, 1921, is about fifteen million dol-
4765 lars worth, it represents about six billion stamps.

I cannot tell either accurately or approximately how many dollars our company paid out to redeem its stamps from the time it commenced business up to February 28, 1921. The figures I have here do not show that. It shows what the redemption would be if the redemption price was the same as the selling price.

(The witness was then asked to testify from memoranda

which he had prepared what per cent of the stamps issued by his company from the time it began to do business up
4766 to February 28, 1905, a period of about 10½ months, was to redeemed. Mr. Aldrich objected on the ground that no
4770 sufficient foundation had been laid for the witness using the memoranda in question. Discussion took place and
(3717) upon the witness agreeing that his figures might be verified from the books of his company by accountants selected by the Larson Company, if the Larson Company so desired, Mr. Aldrich withdrew the objection to the use of the memoranda by the witness in testifying.)

The witness then gave the following figures:

Period			Per cent. redeemed
To February 28, 1905,	10½	months	45.99
" February 28, 1906,	12	"	78.89
" February 28, 1907,	12	"	91.84
" February 29, 1908,	12	"	95.46
" February 28, 1909,	12	"	97.02
4771 " February 28, 1910,	12	"	93.02
" February 28, 1911,	12	"	93.87
" February 29, 1912,	12	"	93.85
" February 28, 1913,	12	"	94.73
" February 28, 1914,	12	"	94.76
" February 28, 1915,	12	"	96.34
" February 29, 1916,	12	"	99.37
" February 28, 1917,	12	"	96.07
" February 28, 1918,	12	"	97.56
" February 28, 1919,	12	"	87.88
" February 29, 1920,	12	"	87.53
" February 28, 1921,	12	"	97.02

(The witness continuing:)

(3718) The company sold prior to February 28, 1921, 6,025,100,690 stamps. During the same period we have redeemed 5,613,644,830 stamps. 411,455,860 of those sold were unredeemed on February 28, 1921.

4772 I have prepared memoranda from which I can tell the percentages of the different issues of our stamps that were redeemed by our company from time to time.

Of the first issue, between April 11, 1904 and August 18, 1905, 62.94 percent were redeemed up to September 1, 1905. At the end of one year more, 95.55 percent of that issue had been redeemed. 97.49 percent of that first issue had been redeemed at the end of two years

from September 1, 1905. The third year was 98.27 per-cent. The fourth year, 98.60 percent. The fifth year, 98.76%. The sixth year, 98.85%. The seventh year, 98.90%. The eighth year, 98.94%. The ninth year, 98.97%. The tenth year, 99.00%. The twelfth year, 99.00%. The thirteenth year, 99.03%. The fourteenth year, 99.03%. The fifteenth year, 99.03%. The sixteenth year, 99.03%.

4774 I will explain why the per cent. of redemption, viz., 99.03%, has remained constant for that issue during the fourteenth, fifteenth and sixteenth years. We sold of that series of stamps something over four hundred twenty five thousand dollars worth. These figures show the percentages up to one hundredth of one percent. One hundredth of one percent of $425,000 would be $42.50. $42.50 would be 17,000 legal stamps, from us. Therefore, it takes 17,000 stamps to change this per cent (3719) one hundredth of one percent. Although we did redeem stamps during this period of that No. 1 series we did not redeem enough of them to change that per cent. one hundredth of one percent.

(3720) Referring to the second series of stamps which 4775 were issued during the period beginning August 19, 1905, up to April 20, 1906, there were redeemed up to May 1, 1906, 50.96 per cent. of that issue. The per cent of that particular series No. 2 that was redeemed one year later was 91.18 per cent; 2 years later, 94.60%; 3 years later, 97.18%; 4 years later, 97.50%; 5 years later, 97.66%; 6 years later, 97.74%; 7 years later, 97.79%; 8 years later, 97.82%; 9 years later, 97.85%; 10 years later, 97.86%; 11 years later, 97.87%; 12 years later, 97.88%; 13 years later, 97.89%; 14 years later, 4776 97.89%; 15 years later, 97.89%. The percentage 97.89 has remained constant for the last three years specified, although stamps of that second series have been coming in constantly because enough have not been coming in compared to the size of the issue to vary the percentage. I do not recall the exact number of stamps that it would require to change the percent of redemption of that issue one hundredth of one per cent.

4777 New York City,

October 18, 1922. 2:00 P. M.

HENRY C. BRINE resumed the stand for further direct examination by Mr. Mayer:

We began to issue series 3 of these stamps April 23, 1906, and the last of them was sold December 10, 1906. Within the two dates just mentioned and up to the first of the following month there was 59.28% of that issue redeemed. The redemption period that I just spoke of begins to run April 23, 1906, and ends December 31,
4778 1906, or January 1, 1907, approximately. We get our figures only once a month from the auditor who closes
(3721) the books monthly. During the middle of the month we would not know just what had been redeemed. That's why, where we stopped issuing series 3 December 10, 1906, I don't know what the redemptions were up to December 10th, but we do know what they were up to the end of December.

The percentages of the company's redemptions of its No. 3 series for the year next following December 31, 1906, and for each year thereafter, were as follows: for the first year 94.60, beginning January, 1907; the second year was 96.94; the third year was 97.79; the fourth year was 98.13; the fifth year was 98.29; the sixth year was 98.35; the seventh year was 98.39; the eighth year was 98.42; the ninth year was 98.45; the tenth year was
4779 98.46; the eleventh year was 98.47; the twelfth year was 98.48; the thirteenth year was 98.48; the fourteenth year was 98.48.

The percentage was constant in the last three years to which I referred because the percentage of redemption during those three years was not sufficient to change the redemption percentage one hundredth of one per cent.

Series 4 began December 11, 1906, and went to August 20, 1907. The percent of the No. 4 issue that was redeemed between December 11, 1906, and August 31, 1907, was 55.38%.

4780 The percent of redemption of that Series 4 for each subsequent year was as follows: 1 year later, 94.01; 2 years later, 96.71; 3 years later, 97.39; 4 years later,

97.64; 5 years later, 97.75; 6 years later, 97.81; 7 years later, 97.85; 8 years later, 97.88; 9 years later, 97.90; 10 years later, 97.91; 11 years later, 97.92; 12 years later, 97.92; 13 years later, 97.93.

I have no explanation as to why the redemptions of series 4 have not been brought beyond 1920, except that the figures were made out sometime ago.

(3722) During June, July and August, 1922, 575 stamps of series 1 were redeemed; 401 stamps of series 2, 420 4781 of series 3, and 991 stamps of series 4.

My company was in the habit of setting up a reserve on account of its liability caused by the issuance and 4782 distribution of its trading stamps. I will explain the basis. We figured the number of stamps of the given series issued and deducted one and one-half per cent, which we take into profit, and figure that 98½% will be redeemed, and deduct from the 98½% of outstanding stamps the number of stamps that have been redeemed, and from the balance we deduct the profit that there probably will be in the stamps and treat the remainder as a liability for outstanding stamps. We keep our books with the idea that we will eventually have to pay or redeem 98½% of all the stamps we have issued.

As to how long we have kept a reserve on that basis, I will say I don't remember exactly when we changed it, but I think we have kept it approximately for eight or nine years; but in connection with that I might say that when the company was started the directors had a difference of opinion as to what per cent of the stamps sold would not come back, and originally their opinion was that from twenty-five to forty per cent would never come back, and when the company was first started we took into profit twenty-five per cent of our sales as being the profit from unredeemed stamps. After we kept these statistics for a short time we discovered that twenty-five per cent was a ridiculous figure for us to figure as a percentage that would not be redeemed, and that percentage was changed during the life of the company two or three times, the exact dates and the amounts I don't recall, but we figure from statistics that we have kept that one and one-half per cent is a proper figure for us to use or take into profits as lapses in redemptions. We call them lapses.

(3723) We have had three occasions when we got an un- 4783 usual redemption of stamps. At one time our former

manager put an advertisement in the newspapers which read, at first glance, "Legal Stamps Are Not Good." If it was read a little more particularly, you would find between the lines some fine print, so that the ad would read "Legal Stamps" then in fine print "bearing my signature" "Are Not Good."

The stamps prior to this time were used with the manager's signature on them. That caused an unusual redemption the following month. I have not the figure in my mind exactly, but the redemption per cent. to the sales for the month ran up considerably above one hundred per cent. My recollection is that it went up as high as 150% in one month.

Another time one of our large customers, Houghton & Dulton, discontinued or terminated their contract at the proper time, and that caused an unusual redemption because people became a little suspicious that the stamp company was not financially sound, perhaps.

At another time a large chain of grocery stores, the M. O. Keefe Company, discontinued the use of stamps. They had been distributing them in approximately one hundred and fifty stores. And this caused an unusual redemption per cent. to show up, but, of course, this per cent. was figured against the sales for the same month.

4784 To counteract that advertisement of our former manager we advertised in the same papers rather more extensively than he did that all legal stamps were good
4785 and would be redeemed by the company. Our stamps were and are known as legal stamps.

(3724) My observation is that the discontinuance of a large customer like those chain stores would have an effect in general on the collectors who lived in the neighborhood of such stores. They would be apt to become suspicious of the company and start to redeem their stamps a little more quickly than ordinarily. It would, of course, increase the per cent. of reduction to the sales. Anything that was reasonably calculated to make collectors think that the distribution of our stamps was going to be discontinued would hasten the redemption of stamps materially.

4785 *Cross-Examination by Mr. Aldrich.*

My company was organized in 1904 with a capital of
4786 $100,000. It was paid in. Ten men organized the company, each of them paying in $500. in cash, and each of then taking ten thousand of stock in lieu of the contracts that they had made with the company for the use of stamps. A large amount of stamps was not issued to them free.

I mentioned sometime ago that some free stamps were given, but no free stamps were given an incorporator and stockholder any different from what they were to an organized customer of the company. The free stamps that were given were sometimes a lot of thirty. They would print up a lot of thirty stamps, and for some particular day in the week they might give thirty extra stamps free to a customer that brought in a stamp book.

As to whether that is the only method of free distribution of stamps that we have had in our history, I
(3725) will say I think very early in the history of the company we printed some stamp books that had possibly a page of free stamps in it. That would be thirty stamps on a page, but we have long since discontinued anything in the nature of a free stamp. There was a comparatively small amount of free stamps issued, and they were only issued for a short time. I have not any fig-
4787 ures that would tell me now what they were. I don't think I could dig it up if you asked me to. I don't think we had any record of them.

Mr. Emory, the manager of the company, had charge of the distribution of the free stamps in the first instance and during the period when they were issued. I don't remember his full name. He is alive yet. The last I heard of him he was in Florida. I could not approximate the total amount of free stamps issued with any degree of certainty.

The ten subscribers to our stock were not given stamps at a lower price. They all paid the same price, $2.50 a thousand, whether they bought two hundred thousand dollars a year, or $2.50 worth a year. They each paid $500. apiece down, and their contract was taken for the balance. On our asset and liability account the item to offset the difference in the capital stock would be an item marked "Contracts". I think originally the con-

tract item on the asset and liability account was $95,000. They did not actually pay the $95,000. The subscribers paid the same price for the stamps that anybody else did. If there were objections, we did not sell the stamps to competitors in the same line of business and in the
4789 same neighborhood. In some cases there was an objection.

(3726) The merchants who were originally subscribers to our stock were all merchants in Boston. Some of them were in the same line of business. Some of them were not far away from each other. I was in one block and Butler in the next block, engaged in the same line of business, and Gilchrist in the next block. The three of us were engaged in the department store business. The Gilchrist Company, William S. Butler Company and William H. Brine Company were the three concerns. In the smaller towns in and around Boston we have allowed two or more competitors to use our stamps. Occasionally there has
4790 been some restriction of that character, but not often.

I think Wrigley Exhibit 38 has printing in five different languages. These books are given to the merchants, and they in turn give them to the customers. When a customer begins to make purchases in a store, she is given one of these books, and in proportion to her purchases, is handed stamps to paste in the book. That is, in the smaller stores that would be so. In the large
4791 stores they would get a slip good for so many stamps, which they would have to take to the stamp desk and get the stamps from the stamp girl, in the same store. We have appealed to all elements to the best of our ability, both foreign and domestic elements. The book was not particularly intended to appeal to foreigners. The English language predominates in the book. The foreign element, so a large extent, save these books. Merchants who use the stamps advertise the fact that they use the
4792 stamps. Some make them moderately prominent in their advertising and some give it no prominence at all. Merchants were in the habit of advertising stamp days when they gave double stamps. It is optional among
(3727) our 2,000 customers. A good many of them do it in the dry goods business and very few, if any, do it in the grocery and provision business. Our 2,000 customers I should say are divided into 800 dry goods stores and
4793 1200 grocery and provision stores.

That advertising of double stampday is designed to attract customers to those stores, and it is an attraction also to the customers of the stores to wait and trade on those double stamp days. It is so intended in the scheme which we are promoting, and I think it works out, so that we have a merchant who is offering double stamps for each 10 cent purchase and customers who are seeking it.

4794 I will explain how our company makes a profit as a company. We sell the stamps at $2.50 a thousand and we redeem them in cash at $2.00 a thousand. That gives us a profit of 20%. We redeem others at $2.175 a thousand. These are the books that have been redeemed by the merchant at $2.50 in merchandise, the merchant standing the difference between $2.50, the value of the merchandise, and the price they return the books to us at, $2.175, a matter of 13%. So that we make 20% on the cash redeemed books and 13% gross on the so-called merchandise redeemed books and 1-1/2% on what we figure as a lapse. Practically all of our books are redeemed from the merchant; very few collectors coming to the office to redeem a book. Some few do, but very few, so that the number who do as compared with the total redemptions is negligible.

4795 Practically all of our 2,000 customers are in Boston or in the suburbs. The bulk of the business is concentrated right around Boston and within 10 miles. We have some business in Lynn, which is beyond the 10 mile (3728) limit, and some in Marlboro. Marlboro is also outside of the 10 mile limit. But by far the greater portion of the business is within the 10 mile radius.

4796 February 28th is the end of our fiscal year. In giving these redemptions for each year, I do not want the court to understand that the percentages named by me were of the issue of the particular year. The percentage given in each case was the percentage that the stamps redeemed for the period bore to the stamps sold for the same period. In giving the percentage, for instance in 1919, or any other year, I was giving the percentage of redemptions of stamps issued, not only in that year, but in all prior years. The percentage is based on a comparison of total redemptions and the sale of only that year.

4797 The redemptions are figured at the selling price, not the redemption price.

If we sell a hundred million stamps in a given period,

and we redeem ninety-three million stamps, regardless of what price we redeem them at, if we are figuring it in dollars and cents, we would have, to get the percentage of redemption we would have to figure the redemption at the sale price, $2.50. If, for instance, the redemption price was $2.00 and they reduced it to dollars and cents, it would change the percentage very materially.

4798 If a person had a book containing only 920 stamps and wanted to dispose of it before it was wholly filled, he would not have to bring them to us to get cash on it. He can take it to any of the stores. If you notice page 12 of Exhibit 38 there is a line reading "When filled to here the cash value is 70 cents." And on each page there is (3729) an entry designating a place, that when filled it has a cash value. But the collectors do not need to go to that particular point in the book. We would redeem it for cash no matter how few or how many they had in the books. The redemption is almost always made in stores. It can be made in our office, but only one-half of one per cent come into our office, except through the stores. In the redemption of the stamps since the beginning the stamps that were given away have not been discriminated against or segregated in any way. They have been redeemed as they have been presented. They are all included in the computations which I have given here. There have been occasions in our history when special arrangements have been made with customers or with persons by which stamps were sold at other than the regular contract price.

4800 There were two cases where the former manager made a contract with a merchant, giving him a 3% rebate at the end of the month on his month's purchases. This he did without the knowledge of the directors. He signed a contract himself when the directors did not know of the existence of those two contracts, at least the directors that were then living, until I became manager of the company, and as soon as we did find those contracts with the special rebates in them, we took it up with our attorneys, took it up with the man himself and told him that we would either make a new contract with him or we would break the old one and he could start a lawsuit if he wanted to. He decided to sign the new contract with us and waived that clause in the old one, and those are the only exceptions that I know of in the history of the

business. Customers are not offered stamps in such stores in all cases.

(3730) In the large department stores my experience would lead me to believe that 80 to 85% of the sales of the stores demand stamps and get them.

4801 The contract with the storekeeper provides that he will give them when they are called for, when they are asked for. He does not contract to offer them to everybody whether they ask for them or not, and in the large department stores they get the coupon and have to go over to the stamp desk in order to get them, and it is in that large department store that I say I believe that 80 to 85% get the stamps. The stamp check comes back from the desk whether they ask for it or not.

(Mr. Aldrich then stated that he had been in stores where another stamp was used and he had been greeted on the floor by an offer of a book, and then he had always received a check if he made a purchase, that took him to a stamp desk or that he gave to some one who took it there before he got through, so that it was a free offer.)

The witness continued:

4802 I do not think our practice differed in any respect except that we don't always keep someone on the floor to offer the customer a book. The idea of offering the book is to get a customer started with the book at that store so as to make a customer for that store. But I think generally the person who offers the book is a person in the employ of the stamp company, and not the store. We have had people in our employ whose business it is to tender the books. We don't happen to have anybody doing just that now.

(3731) The advertising of the stamps by the merchant in the paper of double stamp day is a tender to the customers of the stamps if they come there and become such a customer. The whole stamp plan or theory is a method of advertising. As to whether on the merchants' books it would be carried as an advertising expense, I will say it is not always carried the same on the various books.

4803 One large dry goods store that I happen to know carries it, of course, among his expenses, but he calls it "general stamp expense," and separates it from his newspaper advertising expense.

Our business went off in the calendar years 1917 and 1918. In 1917 the redemption was large, the sales had

4804 fallen off a little. The sales had fallen down and the redemptions for that reason went up a little. Now, in 1919 the sales went up a little and the redemptions went down. Of course, figuring the percentages this way, if our sales dropped off our percentage of redemption to sales would increase. The year prior to February 28, 1917, the redemption was 96.07. That's the drop that has been referred to. The next year the redemption was practically the same as that, 87.53. That's for the fiscal year ending February 28, 1920. The cause of the large percentage of 97.56 was that the sales fell down and then the percentage went up. The year the sales fell down was the year ending February 28, 1918. Those were not the two years when the percentage decreased about 10%. The next year, ending Februar, 28, 1919, the sales showed an increase, and the redemption per cent. dropped. The percentage shows that the number (3732) of stamps redeemed in that year fell off also.

4806 As to how I account for the fact that the sale of stamps fell down during those two years, I will say I don't recall just when we entered into the war, whether it was during that period or not, but there was a couple of years when the boys were being drafted and many small stores closed. I don't know whether I am in the right year. We had a great many small stores that during that time simply closed their doors and we lost a great many customers, and there was some upset in business due to the war conditions.

4807 In making these comparisons by which I have arrived at the percentages that I have in each of the years, ending February 28 of each year, I have considered only the sales preceding that date for a year for the purpose of arriving at the percentage, and I have included the redemption of all series from the beginning.

Redirect Examination by Mr. Mayer.

I have given certain percentages of annual redemptions beginning with the ten and one-half months period prior to February 28, 1905, and ending with the 12 months that's prior to February 28, 1922. It is correct to say that in ascertaining the percentages which I gave I took the per cent. of the stamps that were redeemed in a given period to the stamps that were issued in that same period.

So that if we issued one million stamps in any one 12 months period, and if I said the per cent. of redemptions in that period was 90%, I meant that 900,000 stamps were redeemed in that period; and of course, the 900,000 re-
(3733) ferred to covers redemption of stamps, regardless of
4808 when issued, of all series. I have also said that out of the total number issued we have redeemed over 93% over the entire period. In the other figures that I have given I have stated the total number of each issue that has been redeemed during the entire period.

We have kept from four to twelve girls busy since the company started, or since soon after the company started, in keeping the records as accurately as we could keep them, showing just how many of each series are redeemed day by day.

The testimony I have given here today has been based
4809 upon the results so ascertained.

I believe those two contracts which I said a manager of our company once made without the knowledge of the directors were made without any right on the part of the manager. It is my opinion that the expense the retail merchant has in connection with the handling of our legal stamps is a selling expense. It is my idea that the expense of giving stamps is much the same as an advertising expense, and if it gets the results that are ex-
4810 pected and intended, the merchant increases his business materially, thereby increasing all of his overhead expense per cents. The intention of the merchants and stamp company was to have a double stamp day on what would ordinarily be a dull day in the week and make it a busy day. It has in many cases acted so that the customer has delayed purchases until a double stamp day.
(3734) It has worked out that way unquestionably. It was not the intention of our company or of the retail merchant that double stamp days would so work out or bring about such a result.

4811 I should say that the free stamps were only given during the first couple of years of the existence of the company, and the Per cent. would be very small indeed, but what the per cent. is or how many have been given out, I have not any idea.

4812 I have one other suggestion in connection with that that I might make. We have shown you that on the Number 1 series our books show over 99 per cent. have been

redeemed. I have also stated that we treat and believe and figure that only 98-1/2 per cent. will eventually have been redeemed. I believe that the auditor and the directors have considered that the free stamps that were is-
4813 sued, and the books that were originally issued with only 990 stamps in a book were responsible for a little over half of one per cent. of that figure of the first series. That they have, after years of experience, fixed the redemption lapse at one and one-half per cent. would bear me out in assuming that they figure a little over a half of one per cent. was effected on the figure here in the first series. That would not effect the percentage of redemption of the other series in any way, materially. Free stamps were given only the first couple of years of the company's business. I am satisfied there were no free stamps issued as late as 1908. The series issued in 1908 were series 5 and 6.

Series 5 started August 21, 1907, and went to May 5,
4814 1908. 97.13% of that series had been redeemed 10 years
(3735) later. Series 6 commenced May 6, 1908, and ended January 10, 1909. Ten years later 97% of that issue had been redeemed. I am satisfied there were no free stamps issued during any of the period covered by our series 5 and 6, but if any free stamps were in any of the books that came in for redemption, they would have been redeemed by us.

Series 9 started February 4, 1911, and went to December 22, 1911. Up to 10 years later we redeemed 97.01% of that series. I presume there were very few free stamps included in the percentages that I gave of our redemptions of series 5 and of series 6.

4815 *Recross Examination by Mr. Aldrich.*

I have testified that of the early series we were from time to time, up to the present time making redemptions. We would continue to make redemptions up to the present time of free stamps, if any were outstanding.

I will explain how I am able to state, when I say that in series 7 or 8, commencing at such a time and ending at such a time, we have redeemed a certain percentage, that that percentage pertains only to that particular series. These auditors that I spoke of employing, from four to twelve since the early days of the company, take
4816 a stamp book when it comes in and look it through and

find out how many number 22 stamps there are, and put it down, and how many 21, and make a record of it, and how many of each series have come in. Those sheets are added up and handed to the bookkeeper, who charges them up at the end of the day to the various series as having been redeemed.

I am able to state only in a general way that the number of free stamps given at or about the time of or
(3736) shortly after the organization of our company was approximately a small number. I, at that time, was not manager of the company. I now do not know how many were given out, and they don't seem to affect our figures materially. I have not any means of knowing just how many there were, but I believe that there was a very small percentage.

Re-redirect Examination by Mr. Mayer.

I think there were no free stamps issued while we were issuing series 5 and 6, between August 21, 1907, and Jan-
4817 uary 10, 1909. The stamps that were redeemed from time to time were checked off and distributed to the different series. When I say that of series 5 over 97% have been redeemed, I know that that percentage has to do with series 5 alone, and includes no free stamps. When I say that of series 6 over 97% have been redeemed, I know that that does not include any redemptions of free stamps.

I will state that my former answer was incorrect in a way. It is a fact that over 90% of series 7, of series 8, of series 9, of series 10, of series 11, of series 12, of series 15, of series 16, of series 18, and of series 19 have been redeemed, respectively. And I know that in the redemp-
4818 tion of those particular series no free stamps were included. So that whatever percentages I have given as a witness in this case, having reference to any specific series, I know they did not include or refer to any free stamps unless with respect to the series issued during the first couple of years of our business.

(3737) *Re-recross Examination by Mr. Aldrich.*

In asking me the question that I just answered I know why Mr. Mayer left our series 13 and series 14. When

we started to keep the records of the different series we had not formulated any very definite plan, and we called the first stamps that we issued series 1, the second stamps series 2. After we had series 12, I was then manager and concluded that we would try and have the series number correspond with the year in which we issued the stamps, and therefore the next lot that was ordered was number 15s. We had no 13 and 14. The series we so started with the number of the year were ordered sometime in the year 1915, for use in 1915; and the same explanation will explain another year that was interrupted on the serial number later on. That was Number 17. We went
4819 from series 16 to 18 because the stamps that were ordered for '16 extended over in '17, and so far into '17 that we did not order any Number 17 series.

If the Larson Company decides to send accountants to me I will keep the sheets from which I have testified and which have served as memoranda so as to facilitate their work. I will do everything I can to facilitate their work so that they won't need to be there long.

I cannot answer now how, if any, free stamps were received during any of the subsequent years, it would show. When your man comes to Boston, perhaps we can
4820 dig that up. That's been running through my mind for several minutes where they went.

(3738) October 19, 1922, 10:30 A. M.

(New York City)

4821 JAMES H. BOTZ, called as a witness on behalf of the Wm. Wrigley Jr. Company, being first duly sworn, testified on direct examination by Mr. Mayer:

My name is James H. Botz. I live in Haworth, New Jersey. I have lived there three years. I am comptroller of Colgate & Company. I have been with that company
4822 for two years. I went there as comptroller. Before my permanent connection with them I was engaged for almost a year in reviewing their accounting system, putting in a cost system, and making some changes in their general accounting system as a public accountant. I am a certified public accountant. I got my certificate in Michigan. I was a partner in the public accounting firm

of Sangster, Mathews & Botz, with offices in Chicago and New York.

Colgate & Company are manufacturers of soaps and perfumes. Their factory and general offices are in Jer-
4823 sey City. Colgate & Company have been in business since 1806 and they employ in the neighborhood of 4,500 people. I do not feel at liberty to give you the figures of their business as they are very confidential. The concern is a close corporation and owned by the Colgate Brothers. Its annual business runs into many millions. It does business in all countries of the world. As far as the United States is concerned, their business is national. We do business in every state.

Colgate & Company advertises, and during the past eight or ten years we have used many forms of advertis-
(3739) ing,—magazines, newspapers, car cards, circulars and sampling, all general forms of advertising. They do that wherever they do business. Their advertising is national so far as the United Sttaes is concerned, and they advertise in foreign countries also. We spend several millions for advertising annually, and that has been a fact for some years past.

I have brought three advertisements picked at random, which are in a general way the type of magazine advertising that we do.

(Mr. Mayer offered the advertisements in evidence as Wrigley Exhibits 39, 40 and 41. Mr. Aldrich objected for the reasons he had theretofore stated to similar offers.
4825 The objection was overruled. The said advertisements were received in evidence, Wrigley Exhibit 39 being an advertisement by Colgate & Co. of Colgate's Ribbon Dental Cream, Charmis Cold Cream and Colgate's Baby Talc; Wrigley Exhibit 40 being an advertisement of Colgate & Co. of Colgate's Cashmere Bouquet Toilet Soap; and Wrigley Exhibit 41 being an advertisement of Colgate & Co. of Colgate's Talcs "Florient" and "Cha Ming.")

4826-8 (Wrigley Exhibits 39, 40 and 41.)

(3740) Wrigley's Exhibit 40 is an advertisement for Cash-
4829 mere Bouquet Toilet Soap which is one of the products of the company, and this, as I see it here, is exclusively for that brand of soap. I don't know where that advertisement was published. It is, I take it, a page of some magazine. I don't know just which one. It does not happen to be marked as to what magazine it is.

4830 Colgate's products amount to over a hundred. The Colgate Company manufactures toilet soaps, such as Cashmere Bouquet, Coleo, Eclat. It manufactures perfumes, such as Florient Extract. It manufactures cold cream, face powders, toilet waters, dental cream, shaving cream.

(The witness was then asked how the expense of the advertisement, Exhibit 40, was charged on the Colgate books. Mr. Aldrich objected. The Master overruled the objection, stating it was understood that the same objection applies to all questions along that line.)

The advertisement, Wrigley Exhibit 40, would be
4831 charged entirely to Cashmere Bouquet Toilet Soap. In my opinion as an expert accountant and from my experience, that is the proper way to charge it.

Wrigley Exhibit 39 is an advertisement advertising three products: Ribbon Dental Cream, Cold Cream, and Baby Talc. That advertisement appeared in the Journal of American Medical Association. That journal has a national distribution. That advertisement would be distributed one-half to dental cream, one quarter to cold cream, and one quarter to Baby Talc. I will state that the basis of determining that method of distributing that
(3741) expense. We adopted the principle of measuring the space occupied by each different product in the illustra-
4832 tion, as well as the text, and we would take this ad, for instance, and find that Colgate's Ribbon Dental Cream—that is the package at the top—that this text is applicable entirely to this product, Colgate's Ribbon Dental Cream. So then we would draw a line through there and give one-half of the ad to Colgate's Ribbon Dental Cream, and then we would take the balance of the ad and find out what the text applied to, and in this particular instance this lower left-hand quarter has entirely to do with Cold Cream and would be so distributed, and the lower right-hand quarter dealing with Baby Talc would be charged to that product. I am speaking of Wrigley Exhibit 39.

4833 Assuming that Wrigley Exhibit 39 cost $100., Colgate would distribute one-half to the top ad and the other half would be divided between the other two.

4834 Wrigley Exhibit 41 is an ad covering certain of our talcum powders. I don't know just what journal that was published in. It is "N. A. R. D. Journal". It is some American journal. I cannot tell exactly how this

particular ad was charged. I can tell you how it would be charged under my instructions. We advertised in Wrigley's Exhibit 41 prominently two kinds of talcum powders, Florient and Cha Ming, and in a lesser way we mentioned Colgate's Baby Talc. We would measure
4835 there the space occupied by each one of these three items and the wording applying to each item would be distributed between the same products. The wording that is general would be distributed in the same proportion that each one of these bore to the total.

My formula is to see how many products are named in
(3742) an advertisement, and no charge for the advertisement is made to any product not named in the advertisement. We may have many different kinds of talc powders, but the only talc powders that would get any part of this ad are the three that are mentioned there.

4836 If a concern manufactures and sells twenty products, and advertises one or two or three of its products in an advertisement, the cost of that advertising should be charged in its entirety to the products named in the particular advertisement. If there are two or three products named in the advertisement, the charge should be made in proportion to the space occupied by each article advertised.

(3743) I will state how I would ascertain what proportion of
4837 the space in the advertisement refers to the different articles named therein if I wanted to make an accurate distribution of the cost of advertising.

The ad would have to be first scrutinized to see what articles appear in it. It would have to be read to find out whether the check referred to the articles mentioned or whether it was general in its nature. You would then have to take the amount of space, we will say given to each amount, as well as the amount of text applying to it and apportion it according to the amount given to each item.

That is the method that was pursued in the Colgate business.

(Mr. Mayer then made a statement to the witness substantially like that he had made to the other expert witnesses on advertising as to what the Master had to determine and what Mr. Mayer wanted the witness to assume in answering his questions.)

4839 I have looked through the seven books of advertising

that are here, being Larson Exhibits 30 to 36, inclusive,
4840 and have a general familiarity with the advertisements of the William Wrigley Jr. Company between July 28, 1914, and November 12, 1918, as they appear in those seven books. In my opinion the cost of those advertisements should be distributed between the products advertised in the ratio that they appear, in the proportion that they appear in each ad. The cost of each ad should be limited to the products appearing in that particular ad. When an advertisement covers two products, I would distribute the cost among two products and if it covered only one product, by name, I would charge the expense
(3744)to one product and if it covered three products I would
4841 charge it to three products. Larson Exhibit 37 is an advertisement that features Wrigley's Doublemint chewing gum. The only reference I see there to any other brand of gum is down in the corner where it speaks of "Made by the makers of the famous Wrigley's Spearmint". If an effort is being made to keep these very strictly divided, it would be necessary to measure out this corner covering this Spearmint reference and charge that against Spearmint. The rest I should say would be wholly Doublemint.

By the use of the word "corner" I referred to the place where I find this spear and the word "Spearmint"
4842 on it. In distributing the cost of the advertisement marked Larson Exhibit 46 I would measure the space occupied by the package of the Wrigley Spearmint gum in the hands of the girl and also the space occupied by the picture of Wrigley's Spearmint package appearing at the bottom of the advertisement. I would take the total of the space occupied by the package of Spearmint in the girl's hands and the package in the lower left hand corner. I would take that as the proportion of Spearmint and I would take the space occupied by the package of Doublemint in the lower right hand corner and proportion the rest of the ad in the same ratio between the two
4843 products. I notice that in that advertisement the word "Wrigley's", which appears at the top of the advertisement is in very large type. I notice that the word "Wrigley's" appeared in large type and others that were in the seven books that I examined.

I think there is a certain advantage in having the name of a concern appear primarily. In my opinion nothing

(3745) should be charged to good-will or as a deferred asset because the name "Wrigley's" is large. I would not consider it a proper charge. The advantage in having the name of the company large is the company may have
4844 a reputation for good products or honesty in dealing. The public may have a preference possibly for that name. The company's good name may be due to the fact that it possibly has a reputation of making pure goods. It may have a reputation for fair dealing. Possibly it has an organization that is exceptional. There are other facts, but I do not recall them offhand. My experience is that it is very necessary to continue advertising to continue to make the same sales that you had before. I would say that Colgate Company's advertising expense per year increases. In my opinion it might hurt the business of a
4845 manufacturer who was conspicuously using his name in his advertisements if he put out a product that did not meet with the public taste. In such a case it would probably have been at a disadvantage to use his name in connection with the advertisement. I would not say that advertising a manufacturer's name always creates a good will and never a bad or ill will. Before a concern can get what you call a good will, there must be a continuance of a product that meets with public favor and a proper distribution and proper service. I would say there should
4546 be such a continuance. I cannot say that I have had the experience in advertising goods that we had to discontinue for some reason, but I will say that we have discontinued where advertising had no effect on sales. I have had experience where we have advertised extensively, but found it unprofitable to continue to sell the advertised products. An advertisement of only two
(3746) products should be charged exclusively to those two products and not to a product of the manufacturer that is not named in the advertisement because that advertisement is made primarily to increase the sales of those items or products that are to be included, and I don't believe that the reading of an ad showing one kind of a product is going to increase the sales or help in any way to push another product.

If we had two kinds of talcs for the same purpose and advertised one of them only it certainly would not increase the sale of the non-advertised brand. It might
4847 even decrease its sales. I say that because it is just a

question of demand. A person goes in to buy a can of talc powder and they select, say, a style they have seen advertised. It means that some other style, if they are in the habit of using Colgate's, we will say,—it means there is need for only one can, that's all. They are only going to buy one and they buy the kind that possibly is so well advertised and some other style will suffer. In other words, the purchase of the advertised brand will supply the want of the purchaser. I should think the same probably would apply to Wrigley's gum. I know if I were going in to buy a package of gum, if I had bought one package, I probably would not buy any more gum that day or until I wanted some more. I would not chew more than one piece of gum at a time.

4848 If an advertiser discontinued his advertising, I think his sale would decrease very rapidly unless he operated with practically no competition. His competitors would get the business. As to the suggestion that the expense of an advertisement like Larson Exhibit 46, where two (3747) products Spearmint and Doublemint, only are advertised, should be divided on the sales basis, I will say I don't think the sales basis gives the proper basis to distribute advertising expense at all. I will state why I entertain that opinion.

Advertising expenditures are all made in some accounting period, and it has always seemed to me that those expenditures should be wholly absorbed in that period and not be extended into the future, and the sales, you 4849 might possibly be charging off advertising to sales that had not yet been reflected, that may be a little later. You put an ad in to-day, you probably would not sell more gum right today, but it might be tomorrow or a little later. I don't think it extends for very long into the future after your advertising appears. In other words, I think it is forgotten rather easily.

Referring to Wrigley Exhibit 39, I don't think such an ad results in equal sales of the three products. In that particular ad Wrigley Exhibit 39 it might have been that cold cream possibly took better than the other items, or some one of the three took better than the other two. I don't think you can speak in a general way on that. I don't think it would be uniform in this case in sales for each item though.

Colgate & Company charge up the expense of advertis-

ing at the time the expenditure is made. It is my opinion as an accountant that is the proper way and the proper time to charge it.

4850 It would not be proper accounting or good accounting or an honest way to ascertain the profits in the case on hearing to make a charge for advertising one or two, but not all of the manufactured products to good will or as a deferred asset.

(3748) I do not think that would be good advertising procedure.

If the advertisement Larson Exhibit 48 cost $100.00 and the two pictures of Wrigley's Doublemint package and Wrigley's Juicy Fruit package occupied the same

4851 amount of space and the package of Wrigley's Spearmint gum in the soldier's hands occupies one half as much space as either of the Wrigley's Doublemint or the Juicy Fruit packages and the balance of the advertisement is equally applicable to any one of the three products. I would say that ad should be divided $40.00 to Doublemint, $40.00 to Juicy Fruit and $20.00 to Spearmint. The formula I have given for the proper way of distributing advertising applies, in my opinion, to all of the advertisement in the seven books of Wrigley's advertisement that I have examined.

4852 *Cross-Examination by Mr. Aldrich.*

I am thirty years old. I was educated in the schools of East Tawas, Michigan, through the high school. My family then moved to Virginia. I entered the Virginia Polytechnic at Blackford, Virginia, in the fall of 1918. I was there a year and a half. I went to Detroit and went to work and in 1911 I had an accounting course in Pace

4853 Institute. I finished that in 1914. During this course I was practicing with a public accounting as a junior accountant. I continued with the same man until two years ago. His name was Andrew Sangster.

During that time I had no experience with advertising

(3749) excepting as I came across it in the various public accounting work. I got my certificate as a Certified Public Accountant in May, 1918. Prior to that time I had been just a junior accountant. I had been a senior accountant prior to my examination, conducting examinations of various books, but I had had no experience in

advertising, except as a matter of accounting. In that accounting it was a matter of treating it as an expense of the firm or company as between the several depart-
4854 ments of the business. I had no occasion to consider them in any other capacity before I entered my present position with Colgate & Company. I will explain in what aspect I had occasion to consider the question when I entered my present position with Colgate & Company.

As I stated in my direct examination, I had been there almost a year as public accountant revising their accounting system. In making that revision we naturally analyzed to a more or less extent all the expense accounts of the business, or rather, we analyzed these accounts with a view to correcting principles. On this subject I did not have any occasion to correct principle. They always kept their advertising distributed along lines that I considered proper. That is, charging to each product its proportion of advertising along the lines I have testified.

4855 Colgate's Ribbon Dental Cream is a trade name. It is my judgment that that name is exclusive in its character and we could prevent infringers from using it.

The "Ribbon Dental Cream" itself is a name that cannot be used, the ribbon part of it, that is, the little slit in the end of the tube. The advertisement reads:
(3750) "It lays flat on the brush. Comes out a ribbon." That idea cannot be infringed. I cannot tell every product we make, but I believe the majority of the names are copyrighted, for instance, Florient, Dactylis, Cashmere Bouquet, any of the names that we sell the goods under. Octagon Soap, for instance.

Octagon Soap get its name from the shape of the soap.
4856 Cashmere has been used a great many years by the Colgate Company and has been widely used. I do not have charge of the advertising of Colgate & Company. I have nothing to do with that department. It is a separate department. We do distribute all the expenditures of advertising in my department. I have nothing to do with contracts for advertising. The preparing and placing of all advertising is done in the advertising department and the distribution of the expense is in the comptroller's department.

(Mr. Mayer interrupted to say that he was not sure whether when he offered Wrigley's Exhibits 39, 40 and 41

he said that photographic copies could be inserted in the record the same as had been done with prior samples. Mr. Aldrich answered that Mr. Mayer had not said so,
4857 but it had been assumed that he had so said.)

Colgate & Company is successor to a business commenced in 1806. I believe "Cashmere Bouquet" has been used by that business around seventy-five years. I think it was around the Civil War that the name was first applied to soap.

I am thoroughly acquainted with the history of the
4858 company since its incorporation in 1908. Prior to that time I believe it was a partnership of the same name. It
(3751) has been substantially in the control of the Colgates since its organization. It was organized by William Colgate, the grandfather of the present Colgate boys.

I said that in considering these questions of expense of advertising and its apportionment among the different products I had occasion to consider it only as a method between departments of products for the purpose of keeping track of whether the particular product was profitable or otherwise.

We are very much interested in whether our products are profitable and try to allocate all expenses that we can direct to the profit.

And then by comparison or conference with the sales department we are able by considering cost and yield to determine that question as to each product. We de-
4859 termine entirely within my department as to what we make on the various products.

We have the sales and we deduct the cost from it, which includes advertising as a part of the selling expense.

The name Colgate has become very widely known, it is practically universally known among the users of soap. We do business all over the world. The wide reputation or character which the Colgate Company has acquired is probably due to different things. I don't suppose any one factor would be responsible entirely for it. It is early customers that probably come down through families. I have heard of families that continued to use certain things, say Cashmere Bouquet, through years and years. Whether it was done through their first trying it and lik-
(3752) ing it and recommending it to other people or not I
4860 don't know. I suppose that had something to do with it.

The company, the proprietors themselves have always had a reputation for very fair dealing, not only with the public but with their employes. They have had a very good reputation for manufacturing only, you might say, pure goods, or as nearly pure as they can be made; the ingredients of many of their products, instead of being bought, are manufactured within their own plant, and I think that has had a good bit to do with it because I have been told that several times, that when they buy something they know it is clean, and it is good, and there is no doubt but what its advertising has had something to do with it. I think that advertising has probably had a great deal to do with it.

I cannot say it has had so much to do with its regular permanent customers as with a certain part of the public, maybe a large part of the public, who, you might say, have no very definite ideas as to what they use and keep changing around.

Advertising is not so much for the benefit of permanent customers as to get new customers.

It is largely to get new customers and also to possibly
4861 try new brands, new things that we put out. In other words, we might put out a new product that we want the the people to know about right away and we will advertise that product.

Colgate & Company spent over a million dollars each year in advertising. I would say that has been so for
(3753) the last ten years.

4861 (Mr. Aldrich then stated to the witness that in the questions he was about to put to him that the witness should assume that in Colgate & Company advertising and expending as much as a million dollars a year its success rested not alone on the publicity or wide extent of its advertising, but on the character of its product, the character of the managers of the company with reference to fulfillment of contracts, proper treatment of customers so that they were satisfied customers. In other words, that Colgate & Company had attempted to do a fair, just business in an honorable way and that such had been its history.)

October 19, 1922, 2:00 o'clock P. M.

(New York City.)

4863 On the assumption stated to me just before recess, I will say that the million or more dollars expended annually in advertising the names of our products as well as the name of our company, particularly the product names, makes them valuable at the time the advertising is being done. It creates a demand for those items. As to whether I want it to be understood that in my opinion the
4864 value of those names is limited just to the times the money is expended, I will say I don't think I could answer that generally as to all products.

With some products it might have a hold over value you might say, but I don't think I could apply it generally to all products. It depends a good bit on the nature of the product and the extent of the competition in that product.

I understand that I am to give facts in my testimony whether it hurts one side or the other.

(3754) The question I just stated I couldn't answer generally as to all products is a difficult one.

Because I don't know of any cases where we have pushed an item very hard which was successful and then we stopped advertising it. I don't know that we have had an instance like that and I tried to consider the question before I answered it.

In registering our names or in adopting names which we think we can prevent others from using, it is our inten-
4865 tion to make those names valuable.

We want to protect ourselves. If we are going to conduct some campaign and spend money on it, we want to protect ourselves that some one else cannot use it.

I don't see any reason off hand if there was no value to the names why we would care to protect, but it has been our policy to take care of all names we adopt even if we didn't push them. I can't tell approximately what pro-
4866 portion of the million dollars per annum is expended on Cashmere Bouquet Soap. That is because the advertising department conducts what we might call campaigns on different items.

Now, we might advertise but very little on Cashmere

Bouquet, say, right at the moment, and maybe at the end of the year they would say "We will make a drive on Cashmere Bouquet and we will spend more money on that item than on others, and consequently they don't put the same effort on all items at the same time.

I said that the apportionment of advertising expense incurred by the advertising department is done by me,
(3755) but my department has nothing to do with the arranging and preparation of the campaigns when the money is spent. It is true I have everything to do with the ultimate figures, so that I know what is done with every item. I am responsible for the preparation of the financial statements. I cannot tell offhand approximately what
4867 proportion of the total advertising expense is devoted to Cashmere Bouquet.

Advertising may mean many different things. It does not mean a magazine or it does not mean a newspaper or it does not mean a car card or it does not mean our sampling expense, and all of those things which are a part of what we call advertising, and when you say that I cannot answer because we might run a sample campaign on Cashmere Bouquet and practically discontinue newspapers, we might vice versa, and I don't know, I just can't tell you that offhand. We have many, many items, and I have not those figures in my mind.

Those things I referred to are all advertising items. I couldn't approximate the amount of expense for advertising Cashmere Bouquet for any one period or the whole period.

4868 At the present time, I should say this last year, or two years, it has not been as large as previously, as some periods maybe for a year or two before that, but I believe now we are starting in again on Cashmere Bouquet, I have noticed just lately that we are going in quite a bit on Cashmere Bouquet again because I believe the sales or the demand for that product has gone down a little and we are going in to bring it up.

When I said that advertising is primarily to increase the sales or products I meant to say that is the sole purpose of advertising. I cannot think of anything that is important outside of that.

(3756) When I first testified and used the word "primary" I meant by the word "primary" that that was its first and
4869 important purpose—the purpose of advertising, but

thinking that there was some other things not as important to be gained, but to be asked specifically what those other things are, I don't think I can think of anything just now.

I desire to say now as a witness that the only purpose of advertising and the expenditure of this million dollare a year is to promote sales. As to whether I include in the term "promote sales" the making of the name of the company well and widely known, I will say yes.

4870 Yes, I think it is always admitted that the public will recognize a product, not only by what is in it, but the reputation of the concern, the two together.

So that it is intended to identify the name of the manufacturer with the product on the assumption that if the name of the manufacturer is favorably known it will be a guarantee as to the nature of the product.

It is a double assurance when a person buys an article and sees the article associated with the name, the firm which we have tried to build up, say Cashmere Bouquet, that will assure a good product.

By using assure I didn't mean that if the public buys something today they will always buy something with the Colgate name on it.

4871 I don't think I can call it anything any more than what will cause a person, if he buys something that he likes, to buy it again as long as it continues to be the same sort of a product.

(3757) I don't think the term good will would describe the condition that I have named here.

Good will is a term that might be applied to a combination of a lot of different things. To define good will as a general term, I don't think I could define good will as applied to everything. Some businesses or some professions, or whatever the good will is to be applied to—there are different factors that enter into it. I don't think that because a person bought a thing today they would continue always to buy it just because it came out under the name of some concern. I don't think that.

4872 They would have to maintain everything that brought this article up to its standard at the time they used it or bought it.

I think the assurance which I referred to would be one of the factors entering into the consideration of good

4873 will. In Mr. Aldrich's statement to me as to what I

should assume in answering his questions, I think there were a couple of things he did not mention. That lead people to come to associate with a given manufacturer a name—so that the association of ideas forms a guarantee or additional assurance that the name stands for a good product. Those things that I don't think were mentioned specifically are the organization and the personnel of the members of Colgate & Company. For many years, as I have been told, the present members of the firm and those before them were held in very high esteem and I believe
(3758) were more or less known around the country. They have done several things that connected them with worthy enterprises and I think that that in a way has given a fairly good name. Things like that spread, and in addition to those they have what I consider a very remarkable organization. I have never run across one like it in my experience with different concerns, and they are very well equipped with very efficient men in their offices, in their factories, and in their foreign selling agencies and on the road as salesmen. I think that applies from the lowest employe to the highest, and I think when it is all said and done that the organization has more to do with the success of a concern than practically any other thing.
4874 I mean an efficient organization.

There are many legal definitions I have read as to what good will is supposed to consist of, but if I were asked, as you have done, to define good will, I would say that good will includes value, if any, accruing to a business through the reputation it has gained in doing business in you might say, a first class way, honesty, and having a reputation for producing goods of a high quality and character and being known to the public as producing a reliable merchandise.

I stated that good will is attained through the intelligent, honest conduct of the business, including in those terms, the manufacture of good product, the keeping of contract with customers, and so keeping relations with the customers so that the customers are satisfied both with product and their treatment by the firm.

Another factor is organization for distribution. That end of the business is the one that really comes in
(3759) contract with the customers. Customers would not be
4875 satisfied unless distribution was made according to contract. That was embraced in Mr. Aldrich's statement of

what I should assume. I have read chapters on good will in various accounting books, etc. but I have never made any definite study of it. I have heard that in its early history as a term used in business and in the law, at a time before the means of transportation and communication were as complete as they now are, that the term meant simply the probability that the customers of a shop located at a certain place would continue to buy at that place. In other words, it was a term of locality largely and local in its application.

I understand that as the means of transportation and
4876 communication have widened, that businesses which before were always, or nearly always, local in character have become national or international, as is the business of Colgate & Company.

Assuming all the facts that Mr. Aldrich said I should assume in answering his questions, I will state the means by which the business world has come to extend a local business to a national or international business. There have been different things that contributed to that.

First, I should say that transportation has probably done as much as anything else. In those days it was very difficult to get from one place to another and things did not spread out so much, it was more local. You had a little soap concern here, and one in Philadelphia and one in some other place, and the same way with other manu-
(3760) facturers. As transportation became more modern and you could get more easily from one place to another I think there was a tendency to consolidate or combine
4877 various industries and the result was much large companies that gradually eliminated the smaller concerns, that is, business could be done cheaper and it assumed sore of a national scope rather than local. It was also possible to make your product known through advertising in papers that assumed a national scrope where before they had been more or less local. So the bottom of it I think is that the opening and enlarging of transportation facilities has had as much to do with it as anything else.

It is a fact that publicity is the means of attracting all customers, making them acquainted with the fact that we exist and what products we deal in.

But in my opinion more important than that was the opening up of territory by means of transportation where

a salesman could get into communication or direct touch with the prospective dealers. In other words, to my mind you could not tempt that dealer to order something by mail or having seen some ad, if there was not the further interest in these products brought about through some sort of personal contract. I think that's an experience that is well recognized. I mean you have got to have
4878 salesmen to take a thing that you want to sell over and over again. Take the mail order house business, there is some business done through that, but I don't think it is business where you expect to continue years and years. The most of those things are not of the scope of business that we are referring to here.

(3761) Making people at large know of the existence and of the character of the product is done in two ways by transportation and by advertising. I include in that personal contact of travelling salesmen. I don't mean to say that the travelling salesman reaches the individual consumer. The dealer attends to that. The salesman as well as the dealer. We depend on the dealer to get in touch with his people. In our arrangements with the dealers we may back him in his efforts to introduce the goods in a given locality by giving him a window display or we may give him some samples or something like that that he will give out. There are different ways that we have of promoting trade.

(3762) He knows also that we are conducting advertising
4879 campaigns through the ordinary medium of advertising in periodicals, newspapers, cards in cars, and so forth. In connection with that I want to state that, take a business like ours that's national, they have got to adopt different methods of reaching the ultimate consumer. Take the man out here at, we will say, Five Corners is a station on a railroad. If there was only one store, nine chances out of ten you will find our goods there. The people who are going to buy those goods very likely would never see an advertisement, and unless somebody brings them a Saturday Evening Post or some other magazine—they might notice it in there—but they are going to buy largely by what the dealer carries who they have faith in, and if you can sell a dealer or convince him that is the product he should have against a dozen more coming in with their products, why we are going to do business. Now, in the city

4880 it is different. People are reading magazines, newspapers and car cards all the time. You have two different situations there.

I have never in my accounting experience known of charging a portion of the advertising to the expense for the year in which it was incurred and the balance of it over a period of time, except where we would possibly pay in December for an advertisement that was going to appear in a February issue or some issue of the next year; that's the only place. I do not know of any instance where a portion of the advertising was charged to the expense at the time the campaign was on with the idea that there would be a residual benefit, and taking it up at a later time. In our business, referring particu-
(3763) largely to that, we proceed with the idea that we are
4881 not advertising now and then intent to stop; we are going to continue. Therefore, if we pile it up and defer it to future periods, we are just increasing the amount we have to absorb later because we have bills coming in the next year.

I said that the Colgate name and Cashmere Bouquet Soap are associated together in the public mind. There may be people who buy Cashmere who don't know it is Colgate's, but I should think they would know it is Colgate's without any question. Any intelligent person certainly would.

I am not familiar with the term institutional advertising. We don't have such a classification. I have never looked into the subject of advertising so as to be familiar with that term.

4882 I can't testify anything as to the Rexall advertising, as I am not familiar with it. I know the Rexall stores, but I can't say that I have ever noticed the Rexall advertising particularly. I may have noticed an ad., but I can't say I have ever read it over and studied it in relation to any other advertisement. I probably was not interested in it. I have seen ads. reading "Rexall remedies" and things like that, but I am certainly not familiar with their advertising. I understand the word "Rexall" is a trade name or some trademark they have
4883 applied to a certain line of remedies, advertising being put out under "Rexall" rather than out under "John Jones" or something like that. It also applies to the stores where the remedies are sold. I am not sufficiently advised in the premises so that I could call

(3764) the Rexall advertising institutional advertising. I know that there are many remedies sold by these Rexall stores. They sell several products of the same character. I am not familiar with the Rexall stores. I never bought anything of them in my life.

4884 I have observed the ads. relating to Heinz's 57 Varieties in a general way. I don't think Heinz's ads. are all of one kind. I have seen different ads. of Heinz's, Heinz's pickles and Heinz's vinegar and Heinz's 57 Varieties. I don't recall seeing the name Heinz just by itself. I have seen Heinz's 57 Varieties all by itself for a good many years. The Heinz name appears in all the advertising. It all advertises the Heinz name and their products. I have seen advertisements of Heinz's vinegar or Heinz's pickles and other ads. where there is nothing else, but I can't say in a general way what their policy is.

4885 I think the expenditure of a large sum of money in advertising a name gives value to that name in the eyes of the buying public while the advertising is being done. I won't say that such advertising has no hold over value. I don't know how you would estimate it. It may have some hold over value; some products more than others possibly.

I cannot estimate what hold over value those facts which I enumerated gave Colgate a good name have at the present time. I know that we have continued each

4886 year to spend more and more in advertising, and our business has increased. We feel that we could not afford to stop advertising any product, not for any time at all.

In the organization of the Colgate Company in 1908 no

(3765) valuation whatever was put upon the brands owned by the company. The reason was, there was no change in ownership. As I understand it, I was not there at that time, but, as I understand it, they decided to change from a partnership to a corporation. There were five brothers in the concern and there were still five brothers after they organized as a corporation.

I would not say that the certain effect of advertising on non-advertised brands would decrease the sales of the non-advertised brands. I said in such case the sale of the non-advertised brands might decrease. To a certain ex-

4887 tent, in expending a million dollars a year on advertis-

ing, we are, as to the products not advertised, in competition with ourselves. I can't say to what extent that might apply. I do know that some styles practically disappeared until they were discontinued, through no advertising expenditures on them. I don't know whether the cessation of such advertising expenditure was intentional or not. The discontinuance might have been decided upon by the firm before the advertising was discontinued. It might be that there was no advertising be-
4888 cause the firm had decided that they would not longer continue the product.

I said that I thought if Spearmint was advertised it would decrease the sales of Doublemint, because I thought a person would only buy gum to have gum. If they bought a package of Spearmint, they would not be likely to buy a package of Doublemint the same day or vice versa. If you went in to buy an article, you would buy whatever you decided to buy and let it go for the time, whatever it was. I understand that Spearmint and Doublemint are different flavors. I think that a particu-
(3766) lar brand of gum, like a particular brand of cigarettes,
4889 or of soap, requires a clientele who through a long use or liking it come to seek that brand and not others. I don't think that a person who wanted Piedmont cigarettes would be seeking Chesterfield cigarettes, manufactured by the same firm. If he wanted Piedmonts, he would hunt Piedmont. The point I was making was that the public would try anything once, and if they liked it, they might change. People who had not become attached to other brands might try the new brand, and people who were attached to other brands might try the new brand to see whether the new brand was a better brand. That's typical of the American people. They al-
4890 ways try anything once. The effect of advertising the new brand would not be to decrease the sales of the old brand unless they tried the new brand and continued to use it. They would have satisfied their needs then with another product and naturally it would decrease the sales of the ones that had previously been bought.

I should say I first met a representative of the Wrigley Company in this case a month or two ago. At that time I met Mr. Lane. Mr. Lane made an appointment with me by telephone before that. I had never seen or heard of him before. I did not show him specimens of our ad-

vertising at that time or any other subsequent time prior
4891 to this morning. I did not show anyone else connected with the Wrigley Company any samples of our advertising.

I will explain how I came to select the particular three sheets that I brought here this morning. I went up to the advertising department yesterday afternoon, I was very busy, and I just told them to select for me at random two or three ad. proofs showing one where we advertised one
(3767) product, another where we advertised a couple of products and another where we advertised three products and send them down to my office last night, which they did. Until I saw them I did not know what they were.

I first saw the seven books of Wrigley advertising this morning before the hearing.

I think advertising does give a great value to the name of Colgate & Company and also to the name "Cashmere Bouquet." If approximately $2,900,000 was expended in advertising Wrigley's Doublemint, I should think at the time the money was spent that it would give a value to both the name and the concern and the gum.

(3768) If during the infringing period the Wrigley Com-
4892 pany expended in advertising approximately $6,600,000, of which approximately $3,000,000. was in advertising of
4894 the character which I have inspected in the seven books of advertising I have examined this morning, and if in each of these advertisements the word "Wrigley's" occupies from 40% to 60% of the line space, and if Doublemint is prominently shown along with the other gums advertised with it, and if the Wrigley Company was in the wrong in its infringement as against the Larson Company, and if the advertising in question gives value to the Wrigley name and to the name Doublemint, I will explain why I think that the Wrigley Company, which keeps both names, should charge up against the Larson Company and claim as a credit the amount of $2,900,000. approximately on account of that character of advertising.

I would say that the charges for the ads in question that I have inspected this morning covering the three brands of gum, that the charges for Doublemint should be charged and borne by that product, including whatever text matter was included in the ad. As to why it should be done, I think that that's the proper way to do

it. I can't say why I do it excepting I consider it is sound accounting procedure. I think that a company would be doing a wrong thing to capitalize or defer to the future any part of that advertising. I know I could not recommend it, and I can frankly say I don't think it is the proper way to do it because you would be holding out expenses that you had actually made against some estimated or future business. If the business did not materialize, you would have a lot of deferred items on your books which you would have to absorb, and possibly
(3769) have led your stockholders, or other people interested in the business, to a wrong idea; when your balance sheet is prepared at the end of the year you should defer charges, if you set any up, that appear on the balance sheet as a deferred asset. The fact is that your profits are increased by that much money when actually your deferred assets is not worth a nickel unless you realize on it, and I, for one, if I were auditing a set of books for anybody, I would be very hesitant about passing on a balance sheet with a lot of deferred items representing money actually spent out for which they received no return.

4896 I have been told that it is claimed by the Larson Company that the Wrigley Company should have set up these items as deferred items. I don't know whether Mr. Lane told me that when I first say him or whether it was a question this morning; I asked about the matter of the advertising, what the question was, what the controversy was about, and it was mentioned to me. As I say, I don't know whether it was this morning in going over some of them or whether it was when I first saw Mr. Lane. I imagine it might have been this morning because we did not talk very much the first time.

I did not understand I was called here to combat that idea of the propriety of setting up advertising expense as a deferred item. I thought I was called here to give testimony as to what was done by Colgate & Company, who are national advertisers. I was also advised that the
4897 Wrigley Company went on with the use of the word "Wrigley's" and the word "Doublemint." I was not advised that they claimed that the Wrigley name, or the Doublemint name, had no value. I don't think anybody told me that it did not have any value.

(3770) If I was in the Larson Company's place, and a per-

4897-8 son infringed my label, and had been so adjudged by the court, and retained the names under the circumstances and had expended so large a sum, or claimed to have expended so large a sum as to absorb the profits for the infringing period, and if such expenditure created a value for the names advertised, "Wrigley's" and "Doublemint," I would still say I think if the money was spent on Doublemint gum the profits of Doublemint
4899 should stand the expense of the advertising campaign. The Wrilgley Company, it seems to me, would have to keep on with that advertising.

Taking into consideration that the advertising of Wrigley's Doublemint during the infringing period created a value both for the name "Wrigley's" and for "Doublemint," and the Wrigley Company went on with the advertising after the infringing period, I will state that if they had to continue at the same rate that they had been advertising to maintain the sales they had built up, I would not think that it would be right to carry over any of that other expense into this later period.

4901 As to whether I would have the injured corporation pay all of it, I will say I am not looking at it in the case of an injured corporation. I am trying to look at it as to how we would absorb these expenditures when made against a certain specific product. I think that covers my idea. Even if there was a value created by such expenditure in the name "Wrigley's" and in the name "Doublemint," and there were sales during the infringing period of Doublemint gum aggregating approximately $8,500,000. and the cost of producing this gum was approximately $3,300,000. so that there was a gross profit of $5,000,000, not taking into consideration advertising,
(3771) and the Wrigley Company retains the value named created by this advertising, I still say I do not consider sales a proper basis for the distribution of those expenses.

4902 As to whether I have ever had any experience in questions such as are involved in this examination with reference to the retention of these names and the expenditure of such amount of money in advertising, I will say I think I am familiar with the expenditures of that amount of money. It is a question purely and simply as to the value of advertising made today extending into the future it seems to me, as to how far it is going to hold

over. I cannot testify that it will hold over any length
4903 of time in the future if we were to stop advertising right now. I think it is very, very doubtful if you don't continue. Competition is very, very keen, and, as I testified on a couple of occasions, I know we would not dare to stop advertising today.

With further reference to this question of distribution on a sales basis, you take a new product and start to advertise it, the sales are naturally very small, and it would not be fair to absorb that cost by other products when they might not be in any way related.

I say that I do not think that it would be right to distribute this advertising during the infringing period on a sales basis. I understand that the right and interest of the Larson Company terminated with November 12, 1918. I do not recall that I have ever had any occasion to consider a question such as I am advising the matesr about
4904 now as to distribution under the circumstances shown here.

As to why I think I am qualified as an expert to advise the master, I will say I am merely stating what we have
(3772) found out through experience in the expending of several million dollars in advertising, what we have adopted as a policy of the company there and how we feel that we must continue all the time to advertise to keep up sales, and I was going to say that's the principle that we have adopted in distributing such expenses; that's what I testified to.

Redirect Examination by Mr. Mayer.

The business of Colgate & Company has been profitable and successful from a financial standpoint. I testified that advertising Wrigley's Doublemint might have a
4905 value at the time the advertising was done.

My idea in that statement was that extensive advertising brings this name before the public, they become educated, you might say, to the fact that there is such a thing as Doublemint gum, and it has certain qualifications, certain things that might appear attractive. I don't know just how to express it, but it would create a demand by continuing seeing the name here, there and all over, and it would promote sales of the product. By the word "qualifications" I ment quality, that Doublemint

might have certain qualities. It was a creation of a demand for Wrigley's Doublemint gum that in my opinion would cause the advertising of Wrigley's Doublemint gum to give it a value at the time of the advertising. It would create a demand. It would be valuable, that demand.

If as a matter of fact that demand was supplied with a Doublemint gum that was not pure, or did not have a
(3773) desirable flavor, or did not give satisfaction for some reason or other, or was not properly distributed, or could
4906 not be procured by the buyer of gum at the times and places where he would ordinarily expect them, or if the ultimate result of Wrilgley's Doublemint business was a net loss, then I would say that that advertising had not been valuable. You would not continue to receive any benefit from it. If the product, Wrigley's Doublemint gum, had an undesirable flavor, or was impure, then I think it would not be of value to Wrigley to have his name connected with it. I should think it would be very detrimental.

In order for the advertising of Wrigley's Doublemint to have a hold-over value, not only would the advertising have to be kept up, but also the organization and the service and the product and the public taste and the net profits would have to be maintained. All of those factors
4907 would ve very necessary if there was going to be any value, and expecially important would be the amount of earnings that had been made in the years during which this advertising was done. If the profits that had been made did not represent an adequate return, I should think that the hold-over would have been smaller; if it had been a very lucrative business and profits had been large, it might have a large value. It would be necessary to continue the service and a good product.

I think I associated that with my statement that the advertising must be kept going at top speed because that was what I meant. That is the only counter-action you have against competition, is the continuance of advertising. If you stop that, then you are going to have trouble.
(3774) Colgate & Company have about 400 salesmen on the
4908 road. It was and is my purpose as comptroller of Colgate & Company in distributing the cost of advertising to various products to ascertain what each product does, so that we may know what the profits of each product are when we prepare the departmental statement. When I

said in answer to a question put to me by Mr. Aldrich that I had had no other experience or no experience in such a case as that on hearing, my understanding of his question was that he wanted to know whether I had ever had any experience in determining the value of a name held over, and I said no. In fact, it is very rarely that you would have an opportunity to get that experience, I
4909 should say. I have no interest in this litigation. I have not received or been paid or promised any compensation, and am testifying voluntarily.

HAROLD A. LEBAIR, called as a witness on behalf of the Wm. Wrigley Jr. Company, being first duly sworn, testified on direct examination by Mr. Mayer as follows:

My name is Harold O. Lebair. I live at Cedarhurst, Long Island. It is about 22 miles from New York. I have lived there about six years. I am connected with Sherman and Lebair, an advertising agency, a corporation. I am the Lebair of that firm. That firm of Sherman & Lebair has been in existence since October, 1921.
4911 That's a successor to the firm of Sherman & Bryan, which was in existence a matter of some sixteen years prior to that date. I was treasurer of the firm of Sher-
(3775) man & Bryan. I became a member of the firm of Sherman & Lebair then. I was with Sherman & Bryan about 10 years.

Our firm is a member of the American Association of Advertising Agencies. I am at present a member of the Executive Board of that Association, and for the past year, up to October 15, was the President of the New York Council of that Association. That Association is a regular business Association, having in its membership 130 of the leading advertising agencies of America. It is organized as a national association, and there are five idividual councils, and I was for the past year president of the New York Council.

4912 I have had 14 years experience in advertising. It is rather a difficult question to answer briefly what an advertising agency is.

We first study a business situation or a marketing situation as applied to a particular industry and then, based

on our experience and knowledge,—when I say "our" I include men with varied experience in variou lines of marketing and advertising work—advise a manufacturer or wholesaler or retailer, whoever it may be,—when I use these terms they would also include a person having a service to offer of some kind, profession or any special service of any kind or public service organization and so on—how to sell or market their particular product or service. After having formulated a plan, and it meeting with the approval of our customer or client, we then prepare the material necessary for that advertising in the way of writing the necessary wording, or making the necessary illustrations, or having them prepared, under
(3776) our supervision, determining upon the typographical appearance, supervising, and purchasing the necessary
4913 print material, and so forth, and looked after and studying the proper media, and checking up and handling the financial and audit details, and matter of that kind, and then keeping in touch with our market conditions and studying the conditions both outside of the customer's own business confines and in his business. By the latter I mean studying the conditions of the institution, keeping track as to the manufacturing possibilities, how they can expand, studying their financial conditions in our own interest and in our client's interest and considering various elements that go into proper advice to a customer. We very often use the term "advertising counsel," as a substitute for the accepted term used, but that is to a degree a misnomer. It sounds as though we were merely acting as a broker.

In the last analysis our purpose is to enable our client to make money, that is to say, to profitably sell something. My previous testimony has more or less divided part of our investigation into two parts, namely, the outside marketing part and the inside part of the organization.

On the latter part, which is naturally the most involved, we have to consider, in order for a man to profitably carry on his business, the cost of doing his business. For example, the man may be able, if he spends enough money for advertising, or if he spends money in some other direction, he might be able to increase his sales, but unless he can do that, say within a reasonable expenditure in proportion to the sales pro-

duced, he would go into bankruptcy in the manwhile. We
(3777) accordingly must consider and study very carefully, as I remarked before, in our own interest so as to be sure we receive our payments, and in our client's interest, whether he can profitably and safely spend whatever we can recommend for his advertising expenditure. In that connection, it is our own belief that a man should figure his advertising cost just the same as he figures any of his manufacturing costs. He should study his raw material markets. To give a specific illustration, if his raw material might cost ten cents and his labor might cost him ten cents and his selling cost might be another ten cents, making thirty cents in all, and say his advertising, for the sale of illustration, not attempting to fix any rule, cost another ten cents, that would be forty
4915 cents as the cost of that product, after another ten cents for overhead, fifty cents, and then we will start in and decide what is a fair margin of profit and go ahead, but the advertising would be figured in as a part of the expense of that product just the same as the cost of raw material or whatever it might be.

One of the first questions we ask a new customer when we start to study his business is what is the cost of the article in question, whether it is being sold at a profit or not. Where a manufacturer manufactures, say, 15 products, and he has some advertisements that refer exclusively to one product, others that refer exclusively to two products, and others that refer exclusively to three products, it is desirable for us to determine how the expense of that advertising should be distributed. It is desirable because it comes into this factor I have referred to before of figuring the cost of the article in
(3778) order to plan out advertising and decide where to place it.

As to whether I have personally done much of that type of work during my 14 years experience, I will say
4916 my own particular duties as treasurer of our firm naturally bring that a little bit more into my jurisdiction than any member of our organization. Further than that, my other duties include the contracts with our customers in advising them as to their plans, and that's one of the important parts of my own work. The subject matter is part of my daily work.

I will state in general the scope of the business of

Sherman & Lebair and of Sherman & Bryan, which we
4917 succeeded. We do a business, I don't mind saying, we place approximately a million dollars a year in advertising for various clients. That figure naturally fluctuates as business conditions develops, or as our business developed, but at the present time we do that for clients who are in varied lines of business. We have a firm who is one of the leading underwear manufacturers of the country as a client, if not the leading underwear manufacturer; a firm of cigar manufacturers. We place both national and local advertising. We handle and advise clients in probably thirty-five to forty different lines of industry as to their advertising matters, including their appropriations. They are, of course, included in the total I have referred to as the amount of advertising we place. We place all kinds of advertising.

Mr. Sherman, president of Sherman & Lebair, Mr. George C. Sherman, is the president of the National Outdoor Advertising Bureau in which we place a certain amount of outdoor advertising. Our agency has what
(3779) is known as recognition, which means we do business
4918 with all types of advertising media, national magazines, foreign papers or business papers, billboards and painted signs, street car advertising, and all forms of business, and in that we include directing merchandising as the advisory service I have referred to before. Our work is mainly national work. We do some local accounts and rarely run local accounts for national organization doing local business.

If a manufacturer manufactures 15 products, but in the advertisement refers to only two or three of his products, we would charge that advertisement against the articles advertised in that particular advertisement. If a manufacturer dealt in 15 products, and published an advertisement which referred to only two of the products, and the space referring to each of those two products was equal, we would charge the expense of that advertisement 50% to each article. If three articles out of 15 are named, and the spacer referred to each was equal, each would be charged with one-third of the space. If a manufacturer of 15 articles advertises two or three of those articles, and the space given to each of the articles ad-
4920 vertised in that advertisement were unequal, according to theory I would try to measure out in the advertise-

ment the proportionate space occupied by each particular article in that advertisement. As a matter of practice we very often find that the expense of doing that is not commensurate with the difference in detail and allocate it on more or less the same percentage basis, as I referred to where the space was exactly the same as in your hypothetical question. In other words, we would rely on the eye instead of making the actual measurement. It does not justify the time and detail in clerical help, and so forth, the bookkeeping detail does not justify the re-
(3780) sult. We would limit the charge to the articles advertised in the particular advertisement and distribute the cost in proportion to the space occupied by each of those particular articles in the particular advertisement. We occasionally might mention a name, and not charge it against the article named. That is where we simply used the term "Makers of" mentioning two or three brands, but the whole advertisement would be on one particular article. We would not stop there and charge
4921 any part for the naming of some other article. An advertisement of Wrigley's Doublemint gum with a line or reference to the fact that he is the manufacturer of the famous Spearming gum illustrates what I have just stated. In that case we would charge that advertisement entirely to Doublemint gum, on the theory that that advertisement is an advertisement simply of Doublemint gum, and that the mere mention that the Wrigley organization makes another gum is not an advertisement for that other gum. There are many factors there that might show the contrary, that is, show it was not helpful to anything else and certainly is not an advertisement of the other gum.

I have examined the seven books of advertising offered in evidence here as Larson Exhibits 30, to 36, inclusive.

(Mr. Mayer then made a statement to the witness similar to the statement which he had made to the other experts on advertising as to what was the nature of the case before the master and what the master was trying to asertain with respect to allocation of the advertising in question, and informed the witness in the questions that he was about to put, he, the witness, should assume that it was intended to get his opinion as to how
(3781) to charge advertising in that kind of a case, and for

the purpose stated, namely, to ascertain the profits to be paid over to an outsider or stranger to the Wrigley Company.

Mr. Mayer tahen asked the witness what in his opinion, based upon his experience was the proper way for the court to adopt in this case in distributing the expense of the advertisements that he had inspected in the seven books of advertising.

Mr. Aldrich objected for the reason which he had stated in connection with similar testimony theretofore, taken, and on the ground that the witness was not sufficiently qualified.

The objection was overruled by the master, who stated that the objection would stand to all questions put to the witness along the line of the pending question.)

The witness continued:

4925 In view of the exhibits and the state of facts, it seems to me that those advertisements that are specifically, I believe I am correct in thinking that there are some of them that are merely on one particular product of the Wrigley Company, should be charged entirely against that particular product. In other words, if there is an advertisement that says "Spearming gum" and describes Spearmint gum and talks of it, that should be charged against the expense of Spearmint gum advertising. If there is an advertisement specifically on Doublemint gum, that should be charged specifically against Doublemint gum advertising, and so on. Those advertisements which refer to a particular brand of gum, but have at the bottom "Made by Wrigley Company," or the words maybe "Makers of the famous" and mention some (3782) other brand of gum with an arrow—according to the 4926 interpretation that I have given in answer to a previous question, I still feel should be charged entirely to the particular gum that was being advertised, and then if there were some particular reason to divide the advertisement in any manner, I would include then in my answer to the next illustration, namely, where the main part of the advertisement I will say, for example, is on Doublemint gum, but it has a paragraph or something at the bottom about Spearmint gum, in that case it seems to me the portion of the advertisement devoted to Spearmint gum should be taken in proportion to the part of the advertisement actually physically occupied for Doublemint gum

and then pro-rate the expense of the two brands taken into consideration, and of course, where there are three brands of gum, the same illustration will hold in my opinion.

With reference to those advertisements which refer to two or three brands and the space referring to those brands is not equal I would measure the space occupied by the advertisement for each one of those brands and apply to the space occupied and the pyhsical appearance of the advertisement, and the expense of that particular advertisement I would divide pro-rata to those brands, according to the space occupied in the physical appear-
4927 ance of the advertisement. That's the same method which I have stated heretofore.

I mean in this case, because of the way you have cited the situation. I am carrying it down to the mathematical accuracy of the situation, and not on the basis which I said I have advised some of our clients, and that they have done, of apportioning it roughly rather than carry-
(3783) ing it to details. In this case it will be necessary, it seems to me, to actually measure the space occupied.

It was my belief that the advertisement, Larson Exhibit 37, should be charged 100% to the expense of advertising Wrigley's Doubleemint chewing gum. If, for any reason,—I am not entirely familiar with the facts in the case and the handling—there is to be an allowance made for Spearmint advertising because it is mentioned in that advertisement, I would then measure the part of the advertisement occupied by this bottom line
4928 "Made by the makers of the famous Wrigley's Spearmint", and whatever proportion that holds to the total space of that poster, I would charge that against Spearmint and the balance against Doublemint, but I personally believe that should be charged entirely against Doublemint.

The fact that at the time that particular advertisement was published the Wrigley Company had been in business for many years, and for many years put on the market and extensively advertised Wrigley's Spearmint, is one of the reasons that I believe the advertisement should be charged 100% against Doublemint if there is any limit to be drawn one way or the other.

I feel that this advertisement is a Doublemint gum advertisement, that the mention of the thought that this

is made by the makers of Spearmint gum would to
4929 some extent, though not measurable by a yard stick rule degree, be helpful to Doublemint gum as an introduction; and on the other hand might be harmful to Spearmint gum in getting someone to switch from the Spearmint gum to Doublemint gum to try it.

Larson Exhibit 44 appears to me that that's a fifty-
(3784) fifty advertisement, 50% to be charged to the expense of advertising Wrigley's Spearmint and 50% to be charged against the expense of advertising Wrigley's Doublemint.

4930 New York City.

Friday, October 20, 1922. 10:30 A. M.

HAROLD A. LEBAIR, resumed the stand for further direct examination by Mr. Mayer:

In giving the last answer I assumed that the same amount of space is devoted to the pictures and text pertaining to Spearmint as pertaining to the picture and text of Doublemint.

4931 Referring to Larson Exhibit 46 I will say I have referred once or twice to the question of theoretical, or to the very careful measurement of the advertisement with the question in mind as to whether it was justified for bookkeeping purposes. To cary this out very accurately I think we ought to measure the Wrigley Spearmint package in the head of the advertisement and the size of the Spearmint package at the foot of the advertisement, and whatever ratio they may have to the Wrigley Doublemint package in physical size would be the proportion in which to divide the advertisement though as a matter of practice with our own clientele, as I say, I would divide that advertisement fifty-fifty on the two brands, but for the purpose of your hypothetical question that you asked me for this case it would seem to me this ought to be accurately measured.

I have brought here a car card prepared by our firm for Bayuk Bros., Incorporated, of Philadelphia, who are customers of our agency. This car card appeared in the
(3785) cars of the New York car lines, also in a few adjacent lines to New York City.

4932 Bayuk Bros. are manufacturers of cigars. They manu-

facture six or seven brands of cigars, the number varies. I mean they occasionally make a special private brand, or something of that kind, but, generally speaking they have five principal brands of cigars which they manufacture and sell.

This street car advertisement refers to those five principal brands. They manufacture two or three other brands in addition to the five named in the advertisement, and that varies. I mean they occasionally manufacture still other brands.

(Mr. Mayer offered in evidence the street car card identified by the witness, as Wrigley Exhibit 42. Mr. Aldrich objected. The objection was overruled.

The card was received in evidence and marked Wrigley Exhibit 42.)

4934 (Wrigley Exhibit 42.)

(3786) In my opinion the cost of that advertisement, Ex-
4938 hibit 42, should be distributed equally among the five brands advertised therein.

4939 *Cross-Examination by Mr. Aldrich.*

I have been engaged in the selling of advertising service somewhere about 12 or 14 years. During that time for customers we have advertised prominently in instances both the name of the firm and the names of special brands. One of the main purposes of advertising is to give value to names and brands. I will qualify that on the basis that advertising builds up that value with other factors. Among those other factors are the character of the firm doing the advertising, the brand, the value of the product, its acceptance by the buying public, including honest administration of their busi-
4949 ness, proper treatment of customers so that they have satisfied customers, and care at all times that the product should maintain the standard represented. Similar factors also help to contribute to the value of the name.

I would not say that the advertising was an investment unless it has all those contributing factors with it, and I will say that it is an unsound business method to consider it in what is usually called the term of investment.

4941 I agree that by giving value to names and establishing them in the confidence of the public there is in fact an investment to the owners of the brands in terms of their

good will. As to whether that is a measurable value, is a different problem.

(3787) *Redirect Examination by Mr. Mayer.*

Advertising has no value whatever standing alone. If an article is advertised extensively under its name, and the name of the manufacturer, and the article does not meet with popular favor, then I should consider that advertising was a liability and not an asset. That is, if it was an expense for something which had not been productive.

If the extensive advertising of a name and brand re-
4942 sults in small sales of the advertised brand, and the net result is to cause the advertiser to lose money on the sale of the article advertised, I should say that that had been unsuccessful advertising and the selling effort unsound. I should think any advertising campaign which would result in a financial loss had been unsuccessful and had not established a value. As soon as you stop advertising you loss, from that day on, the value that the past expenditures for advertising have given. Many instances can be cited of firms who have spent large sums of money for advertising over a period of years and believed that there was a value through advertising and have accordingly stopped advertising and then discovered that they have been mistaken in their opinion that there was a value through advertising. Their sales have fallen off and when they started advertising, if they did, have
4943 found that they had to make greatly increased expenditures over their previous regular expenditures in order to overcome the real loss in what they had previously built up, because when you stop advertising there is a harm done to the product. It does not only cease doing good, but there is actual harm that results. And other
(3788) firms, who have stopped and not started in again, have, in many instances that could be cited, gone out of business or their sales have fallen off so as to cease to be a factor in the market.

As to whether there is also a positive harm from the cessation of advertising, I will say the buying public has got used to believing that when an advertisement—when a product is advertised generally that it would not continue to be advertised if it was not a successful and wanted product by the public, seeing it advertised gen-

erally they think that the people want that product and it must be a good product. When the firm stops advertising the buying public which has been seeing these announcements regularly says, "Oh, those people have stopped advertising. I wonder if they have gone out
4944 of business. I wonder if there is something the matter with that product." And not seeing it, after a time they form the opinion it must have gone off the market. There is a product that I have in mind that was advertised quite a little until a comparatively short time ago and then stopped advertising. I had the belief in my own mind that the people had ceased to make the product and it had been a bad product. I have just recently learned through some trade information that that product is going right ahead. By going right ahead I don't mean their sales have gone ahead, they have fallen off materially, but that the firm is continuing in business and is going to start in to try to rehabilitate it, but they have been seriously affected by the fact that they had ceased advertising.

4945 If a name and a product was advertised for 4-1/2 years and involved an expenditure of $3,000,000, and at the end of the period it was discovered that the article
(3789) had been selling at a loss, as to whether I would regard that as a successful article or successful advertising, I will say there are many factor that would have to be gone into in addition to just those covered by the question. I would feel, as I have previously remarked, that a campaign which showed a net loss over a period of years was at least starting with the premise that it had been unsuccessful and nothing accomplished by the advertising expenditure.

4946 One of the functions of advertising is to create a customer for the particular article. The advertisement creates a desire to purchase that article and a willingness to accept that article, I should say. The term "silent salesman" is very frequently used regarding advertising. It creates a favorable attitude toward the product so that the customer would be inclined to accept that product when it is offered to him. The customary purpose of advertising merchandise or service is to get trade.

Recross Examination by Mr. Aldrich.

I have known instances where through a course of advertising, and where the other elements such as the character of the service rendered by the advertiser were present, where the manufacturing concern came to be practically synonymous with the product, so that it was associated in the minds of the public always with a certain product advertised. That is, I have known of instances where the name of a firm has been changed to the trade-mark name of the product. That change was made because the sales had been built up on that product and the product was known in the minds of the buying public better than the name of the firm manufacturing
4947 the article.

(3790) If I as an advertising expert were asked to conduct a campaign, for a responsible firm, of advertising to make a brand well known and also the name of the manufacturing firm, as to what would be my general method of framing such advertisements to that end,
4948 I will say fundamentally I feel that it is unfortunate to try to sell two things in any one advertisement. That's one of the fundamental views that I have on general advertising practice. I have always believed that an advertisement that shows one particular thing accomplished that could be asked of it. There are many advertisements which we prepare that do have the objective your question refers to, but we try to sell the reader one particular thought, namely, one particular proposition, and we would emphasize in most instances either the product more than the name or the name more than the product, generally the product, the object of advertising, in our opinion, being to sell the specific product, and it is only through a specific sale that you can accomplish your goal.

Referirng to Wrigley Exhibit 42 where a great prominence is given to the name of Bayuk as well as to their five products there advertised, I will say the reason I have qualified a number of replies I have made in that there are so many contributing factors to any advertisement or any advertising campaign that it is difficult to specifically answer a question that is limited. The object in this particular advertisement is to make a sale of the product of the manufacturer we have referred

to, "Bayuk Bros." If we run any advertisement on the name "Bayuk Bros." without mentioning the five brands shown on that card, or some one of those five brands, or more than one, I would feel we had accomplished
(3791) nothing through our advertisement and it would be wasted. We accordingly offer the consuming public the
4949 opportunity of buying one or more specific products. A smoker will write or go in and ask for a Prince Hamlet Cigar. He won't go in and ask for a Bayuk Cigar. Accordingly, if we just advertised "Bayuk", we would not have accomplished a sale or gotten a result from that advertisement.

I am familiar with such advertising as Heinz's 57 Varieties and also the Rexall advertising to a less degree. My knowledge is a little bit confused on Rexall as to whether that is just a chain of drug stores or whether it is a buying syndicate or special articles advertised by a syndicate. It is not my impression that it is a trade name that is put on all the goods sold by the several stores where the name appears as a Rexall store.
4950 I don't know that my impression is correct. I am under the impression that certain remedies are put out carrying that trademark, but a store which may use the sign as an agency sign of Rexall can sell other products than Rexall products. That's not based on any study or actual knowledge of facts.

As to what I call such advertising as Rexall remedies or Heinz 57 Varieties, I will say I would like to develop my answer as to the two propositions. Regarding Heinz's advertising, any of the advertising of Heinz which I recall having seen was always on a specific article manufactured by Heinz. I don't recall any advertisement where they features two articles. They may sometimes feature more than one product, but they feature a specific product in their advertising. Now, referring to Rexall, in Rexall advertising they advertise certain specific
(3792) remedies or products that carry that name, and the object is to sell the reader one or more of those particular products.
4951 I would not say that I have not seen any Heinz advertising of 57 Varieties in which no particular product was named. I have seen so much Heinz advertising, it is hard to keep them all in mind. I am under the general impression they usually show one or more specific products in the advertisement. The advertisements, I

am just as strongly under the impression, carry the name "Heinz" and the "57 Varieties" to link up the family.

I would understand the Heinz campaign, and from analysis of the Heinz and similar campaigns, to have as its objective to sell certain patricular products manufactured by that advertiser. In other words, the Heinz Company may determine to push a certain kind of baked beans in a certain market of markets and their advertising at that time will be on that product. They will later determine it is time to push the sale of their sweet pickles and they will advertise those sweet pickles in
4952 that market or markets. That would be the object of that advertising in my opinion, with the feeling that there were many factors in their selling plan to which that would only be a contributing factor.

(Mr. Aldrich then asked the witness as to whether the prominence given to Heinz's 57 Varieties, leaving out the question as to whether it was or was not frequently advertised without any specific product being named, was not to give prominence to the Heinz name. Mr. Mayer objected unless a particular advertisement was produced. The master overruled the objection.)

(3793) I don't believe that there would be any value, if there are such advertisement as you refer to, to an ad-
4953 vertisement that just talked about Heinz or Heinz's 57 Varieties. If I were to read, or Mrs. Lebair were to read an advertisement about Heinz's 57 Varieties and about Heinz, when she was through reading that advertisement nothing would have been gained for the Heinz Company by it. You would have to have a specific brand or pickle or something in there which would make me feel I would like to eat those pickles and go to a store to buy a particular brand of pickles to eat. I don't think the experience of advertising campaigns on what we sometimes call institutional advertising has borne out the value of institutional advertising. In other words, an advertisement to be productive must have the selling urge to go and buy a certain article. We can't buy an institution. Accordingly, the objective of good advertising in my opinion is to sell a particular product.

An advertisement that carries only the name "Heinz"
4954 or "Heinz's 57 Varieties" and does not specifically mention any one article would be deemed institutional advertising. If we desire as advertising men to make in the

minds of the public an association of the name of the product and the name of the manufacturing firm, we would get up reading matter or printed matter, or whatever form of advertising we determined was advisable for that particular proposition, place it in certain advertising media of one kind or another and either through wording properly set up or through illustrations, or a combination of the two, show in such formal advertisements the name of the product, or a picture of the product, or both, and the name of the manufacturer with at-
(3794) tendant reading matter or arguments that might apply. We would make both the name of the company and the name of the product prominent.

4955 My attention being directed to a duplicate of Larson Exhibit 156 and to the words thereon, "Wrigley's after every meal is good for you" and "Wrigley's", and being asked what is the purpose and aim of such an advertisement in my opinion as an expert, I will say, it is difficult to answer what the objective may have been on any advertising that I am not familiar with. I feel it is very bad policy to express opinions as to the value or lack of value of advertising where you are not familiar with the objective and inner workings of the organization, because very often you go entirely astray. A person rushes in and offers a criticism of something that may be very sound.

As to whether if I were directed to put that out, I would not know that the idea, in the mind of the advertiser, was that his name had become so well associated with gums as to make the name practically stand for the gum, I will say, the difficulty that would come in there, in my opinion, is the fact that there are various kinds of gum made by the advertiser, so that I don't know what that would be advertising. In addition to that, I understand that the name "Wrigley" is used on other matters so it might refer to something of that sort though I would not say so.

4956 I have seen the name "Wrigley" used in connection with the advertising of a tooth powder or paste, I am not sure which. This Exhibit 156 could apply to a tooth powder the way it happens to be worded. Frankly I would not think that that's what it refers to. In view of the preponderance of advertising that had been done on the chewing gum manufactured over the name "Wrig-

(3975) ley's", I would naturally think this referred to chewing gum.

I believe that the Wrigley Company's expenditure of twenty millions or more dollars in advertising gum has led the public generally to such a state of mind that they would reach the same conclusion that I say would be felt by me with reference to the advertisement in question. I have known of cases where the name of the firm or the manufacturer came to stand practically
4957 for the product. I have known of cases where the firm's product, by reason of the prominence of its advertising and long continuance, came to be so well known that they changed the name of the manufacturing firm to that of the product.

(Mr. Aldrich then stated to the witness:

Now, in a case where the courts have adjudged an infringement and decreed that the profits made by the Wrigley Company on the manufacture of its Doublemint gum during a period of approximately four years and a half should be paid to the Larson Company, and in which the record shows that the Wrigley Company had made sales of its Doublemint gum exceeding $8,550,000 during the accounting period and had advertised in the manner shown by the advertising books to which your attention has been called, in which, as you will observe, measured by line space, the word, "Wrigley's" is given great prominence, averaging from forty to sixty per cent. of the total space covered by the advertisement, and in the payment for such visual advertising the Wrigley Company expended approximately $2,900,000, and in
(3896) which the record shows that the cost of the manu-
4958 facture of the goods in question was approximately $3,300,000, leaving a gross profit exceeding $5,000,000, and in which at the end of the accounting period, to-wit, November 12, 1918, the Wrigley Company retained both the word "Wrigley's" and also the word "Doublemint", would you think, as between the Wrigley Company and the Larson Company, that the Larson Company should pay for the cost of advertising the Wrigley name and the Doublemint name?

Mr. Mayer objected to the question. The objection was overruled.)

The witness continued:

It seems to me that an advertising expenditure must be entered as an immediate expense and not as a defer-

red charge. The cost of advertising on any article that I know of has to be charged at the time the expense is made, otherwise no firm would ever know where they stood in their financial reckonings, they could not allow
4959 for the one hundred and one contingencies that come along, and the cost of advertising a product such, as Wrigley's Doublemint referred to, should be charged against that each year as it comes along and would be an expense against that particular product each year. If the Wrigley Company, in my opinion, were to turn out the old infringing gum today, any value that might have existed in the—I am not familiar with the details covered by this suit—but if any formula were taken away from them, or any other factor changed in the matter, there would be no value which the past obtained. There are
(3797) many cases where a firm through short sightedness or through the sale from one firm to another of a particular trademark, the quality of the article has been seriously depreciated, the value of that trademark has immediately ceased or been irreparably damaged, and it seems to me it is purely a question of expense each time that any advertising has been done on that manner. I do not see how you can do other than charge any advertising that has been done on Wrigley's Doublemint each year or each month or each day as it has been done against Doublemint as the payments were made for that advertising.

4960 (Mr. Aldrich then undertook to state some of the things to which the witness had testified, and then asked him whether, having considered those things, the witness thought the method he had described as a method of cost accounting inside of the manufacturing plant, where no third party was injured, should be applied as between the Larson and the Wrigley Companies or whether Larson should be required to pay for advertising the Wrigley name and brand.)

4961 The witness continued:

I do not quite agree that I have made some of the statements that I judge, by this last question, you feel that I have made, particularly the statement that advertising has built up a tangible dollars and cents item known as good will. I don't see how that can possibly be measured or that there is anything comes from advertising that builds up a tangible item known as good will. I feel that there is just as much value, and that's one of the reasons

(3798) that I think in a matter that cannot be measured by any foot rule method of reckoning that we must consider the elements both ways. The reason I think that the cost of this advertising should be charged against the brand is that I believe that the Doublemint brand, if there was any value in its association with other brands manufactured by the same manufacturer, and I believe there is such value as long as that manufacturer makes a good product, got such benefits through any advertising that was done in these inter-allied products in the same proportion as it suffered. On the other hand, when a Wrigley advertisement advertises Doublemint gum it is doing harm to another Wrigley product because I believe the Wrigley customers by and large—I am talking about
4962 the final consumer—that there are a certain number of those customers, possibly that number can be increased through selling efforts and advertising, by and large there is a certain market there, and if we advertise Wrigley's Doublemint, we are taking away customers from Wrigley's Spearmint, or if we advertise P. Ks., we are taking away customers from one of the other brands, and accordingly it is an individual competitive proposition, and that the advertising and selling expense should be considered as to each of these brands standing on their merits.

My theory is that a man in advertising and expending money in the advertisement of one brand, is really competing with himself in certain markets, when he is also manufacturing other brands.

I will take the case of Bayuk Bros., referred to here as a customer of mine, it is not likely, in view of cigar
(3799) smoking conditions, that a man who is accustomed to smoking the Prince Hamlet Cigar would become a customer for the Charles Thomson Cigar. The one cigar is a ten cent and up type of cigar, the material used in the making of that cigar, the type of leaf, and so on, is a
4963 different article as to cost and as to taste than the Charles Thomson Cigar which is a five cent cigar so that one is not competing against the other. That's true, and that's the reason for the selection of certain brands in this line of cigars. I believe in their case that the five particular brands shown on this advertisement—I don't recall as to some of the other brands not advertised there—and non-competitive in that they appeal to

different classes and different types of smokers and are only competitive against some outside concern.

I understand that Wrigley's different brands vary in taste. As to why the same distinction would not exist with them as exists in the taste of the Bayuk Cigars, I will say, I don't know how far I can explain that excepting possibly to cigar men, but there are certain—in the question of smoking cigars—practices of environment, or whatever it may be, which make a man believe at least, whether it is based on sound practice subject to serious argument I don't know, that he only likes a certain type of cigar to smoke, whereas I would say that gum, while in a distinct class, nevertheless belongs in the general confectionery line, and a person
4964 who wants gum or candy would eat gum or candy, and while they might prefer one flavor to another, that any gum will do. If a man wanted a package of Wrigley's Doublemint gum and went in and bought that package of gum, he would not be in the market then for Wrig-
(3800) ley's Spearmint gum until he had consumed that Wrigley's Doublemint gum, but that it is quite within reason to believe that the next time he went in to purchase gum that he would buy Wrigley's Spearmint instead of Doublemint gum, but it is not likely to happen in the case of a man smoking a Prince Hamlet cigar, he is not likely to go in and accept some other brand made by Bayuk Bros.

If $3,000,000 was expended, giving such prominence to the word "Wrigley's" and the word "Doublemint", I think there is a value attaching to those names and the publicity that has been given them.

If you take into consideration the manufacturing of a good product, accessibility to its market, and so forth, there is unqualifiedly a value that has been built up to both of those subjects, both the brand and the manufacturer's name.

4945 I also assume that the product was satisfactory or there would not have been $8,500,000 of it sold and its sales would not have been continued by the Wrigley Company, but if it is then put on the basis of a measurable value I don't think there are any two men who would sit down and agree on that excepting where it was a question of sale where men negotiated and finally reached some satisfactory agreement. I don't think it is measur-

able. I don't believe there is any direct connection or measurable connection between the amount of money spent on any given advertisement or series of advertisements and the question of what value there may have been in the name of Doublemint. In other words, without any advertising expenditure, if the rest of the elements were correct, there would be some value there in the case of a sale of the firm or the product, and there would probably be more due to this $3,000,000 advertis-
(3801) ing expenditure referred to, but how much more or what relation there exists is purely a question of individual negotiation where a sale might come along. I don't think it is something that could be measured by any outside parties.

4966 I would say I am emphatically not an expert on the subject of good will. I have had occasion to value good will. I have referred to the fact that the firm that I am now treasurer of, and in which my name appears, succeeded to a previous corporation and I paid something for the good will of the previous corporation so I entered into an analysis of the subject.

I have heard that there are precedents or regulations on the subject of good will. I am not familiar with them. I do not say that there is no rule for measuring good will. I could not think of saying that. I might say this: Applying it to our own business, I am not talking about our clients' business, in the association which I have made slight reference to we have a financial statement, a form of financial statement, which we suggest that all of the members use, especially in reporting to our own financial
4967 committee, and we do recognize the element of good will as a bankable or tangible asset. I refer to the fact that I paid a certain amount for good will in our present firm. I would not be willing to have that actual cash valuation which then existed, I would not be willing to accept that if somebody were willing to buy and I was willing to sell my interest in our firm today. On the other hand, they might not be willing to pay as much as I had actually paid. I mean there are very many other factors that go into it. I certainly would not feel that any advertising we had done for ourselves in the period of the existence of our firm was a tangible factor in that connection, and,
(3802) as I say, our entire association feels that way as is evidenced by the fact that we refuse to have the actual

element of good will appear in our financial statement as a factor.

I do not understand from your questions how you can take any amount of the advertising that you have referred to that was done on Wrigley's Doublemint and charge it excepting against the brand that the advertising was expended for.

4968 I have not investigated the adjudicated decisions for ascertaining the value of good will or its increase in value during a certain period.

Examination by the Master.

(The master said to the witness:

Suppose in the cigar advertisement, Bayuk Bros., and in all of their advertisements, they did not mention the name of any particular brand but advertised the name of the concern in prominent letters on the advertisements and simply advertised cigars for sale; as a matter of fact, they might have had half a dozen brands of cigars, but they did not advertise any one of them specifically, but they continued the advertisement for a long enough period so that the public had come to appreciate their goods and to purchase them freely—you might say they took the market—would you then think that the name of Bayuk Bros., as connected, or if connected, with the cigar business would have a value in case that business was to be continued along substantially the same lines and in substantially the same manner?)

(3803) The witness continued:

4969 Of course, you are citing a condition that they would have accomplished such a thing or that that would be a desirable thing. I cannot conceive that Bayuk Bros. could over a period advertise Bayuk cigars or Bayuk products without advertising specific brands because I don't believe they ever would build up anything through that channel. If you are a smoker, sir, I don't believe if we advertised Bayuk cigars indefinitely, you would ever go into a cigar stand and ask for Bayuk cigars. You would have to be told about some specific cigar to ask for it, and accordingly I don't think the advertising would have done any good. It certainly would have made the name of the manufacturer known, but the important thing to make known is the particular brand. There are other

ads Iwould be glad to discuss where we could take one of these brands and advertise that individually and possibly without much reference other than to the cigar and the fact that it was made by Bayuk Bros. The important element in my opinion is the name of the cigar. I had a letter from a man this morning referring to a product in which he mentioned the name of the manufacturer. I had
4970 known of that product for many years and his letter was the first intimation I had as to who manufactured the product. There is no sales value as to who the manufacturer is. The kind of advertising of one product will reflect on Bayuk Bros. and the fact, as this advertisement shows, we think, if this is a good cigar and it is liked for a certain reason, that that naturally carries an influence on the next brand.

(The master stated to the witness that he assumed from what he said he could not answer the question the
(3804) master put to him.)

The witness continued:

I will try to answer in a specific instance. There is a steel or iron concern, and the fact that I can't remember their name is to me satisfactory proof of the value of the advertising to accomplish anything, that has spent several hundred thousand dollar sadvertising over a period of at least a year and probably two years, not over four years ago, starting in a period not over four years ago, in which they merely advertised their institution, they did not advertise a specific product of that institution.

4971 Trying to answer the master's question, I will say, I don't think you would increase the sales—I presume this is answering your question—I don't believe you would increase the sales of cigars made by Bayuk Bros. if we advertised over a certain period "Bayuk Bros. Cigars." I don't believe that would increase the sale of their cigars.

Now, of course, it cost something in this Bayuk Bros. advertisement to have the name and the products, that takes the space, resting on a background that cost money. We have done that because I feel there is a family association with the brand there that is helpful, and in this
4972 instance I think it is equally so among the five brands, so we have made it among the five.

Referring to the Wrigley advertisements in which prac-

tically one-quarter or a third of the entire space is taken up with the word "Wrigley's" in prominent letters, it is correct to say that that advertising, if paid for by the space, would cost about one-fourth or one-third of the entire cost of the advertisement.

(3805) As to whether I think that it adds that value to the advertisement, I will say I believe that if you put "Wrigley's Doublemint" or "Wrigley's Spearmint" or several brands below it, that that name Wrigley's" in that advertisement contributes a value as long as you are working on your assumption that they maintain a good product and those other factors that contribute a value to whatever individual brand that it may refer to. I don't think
4973 that the space occupied is the contributing factor.

I feel that the name "Wrigley's", being associated with any one or all three of those gums, is a helpful factor to any one and to all three in the sale of those gums, but I don't feel that whatever the actual measurement that this name "Wrigley's" right here in the measurement of it occupies is the relationship as to its value. In other words, if that name was out of here entirely, this part, this large "Wrigley's", and the rest of this advertisement appears as it does, I am inclined to think there is just as much value in this advertisement to each one of these brands whether this large name appears here as long as this name "Wrigley's" was as shown here, (indicating).

I don't say that it is bad advertising to take up so much space with the word "Wrigley's". I don't think there is a—I used the term "Foot rule" a number of times—relationship between the use of that name. In other words, that name might have been used twice as
4974 large and it would not have had any more value in my opinion than if it is this size. Now, if you took it out entirely, I won't say it would not have been a little bit less effective, but whether it would have been any less effective I don't know; if the name "Wrigley's" was taken off the advertisement entirely, I mean off the package, there would be a very considerable definite loss to the
(3806) selling value of that advertisement, because the product here is made—it shows in this advertisement that this product is made by the manufacturer making these brands which through the item of good will which has been referred to, which I interpret to take in all these various

items that have been referred to by counsel, and other items were associated, came from the product of that manufacturer.

Re-Redirect Examination by Mr. Mayer.

As to whether in my judgment an advertisement such as Larson Exhibit 51, which contains no name of any product, is of value to the business of the Wrigley Company, I will say it must help carry along through all
4975 these when, as I believe and understand, it is shown in association with other types of advertisement upon an individual product, and so on. In other words, to come back to an answer I made to the master earlier, if the Wrigley Company never ran anything but that one style of an advertisement ,I don't believe it would do it a lot of good, but run in conjunction with advertisements that run individual brands, then it certainly has a helpful effect.

This advertisement does not even say "gum", but I say the same thing if they just advertise "Wrigley's gum" because there is no such thing as Wrigley's gum as a specific kind of gum.

As to whether in my opinion, unless a manufacturer names a product that is sold by him, a specific product, that such an advertisement does not create buyers of his product, and is therefore of no practical value, I will say,
(3807) I don't see how it can do very much good to advertise a manufacturer unless you tell the people about your product which you want them to buy. What would they do as the result of the advertisement? They would not
4976 know what to ask for.

A case of where a merchant put up a sign, "John Smith, Dry Goods", over his door is a specific instance of the point I have in mind.

If a Cleveland department store merchant takes a certain space in the paper, putting his name at the top of that page, I don't think if he had run that advertisement just in the dummy form, that there would have been much value to him, though he has a specific location and store, and so forth, service to sell, but what he does, I find now, is to divide that advertisement up by departments, he advertises corsets or a brand of corsets here and shoes here and some other product here and he pro-

rates the expense against those departments not by the actual size occupied by that corset part of the advertisement, but he takes the proportion that they occupy of the total page and includes the entire cost of that page. In other words, if his name appears at the head of the page occupying say a third of the page, and these individual departments occupy two thirds of the page, he includes pro-rata against each one of those department the top and the cost of that article that refers to the department named, showing, in my opinion, the only measurable way of handling that proposition.

4977 The theory is that the use of the name only helped to sell the particular product associated in the advertisement with the name. Of course, as I have qualified that sort of advertising question a number of times, there are other contributing factors. If we sell corsets, get some-
(3808) body to come to the store and be induced to buy corsets, they buy something else in that store before they go out. I mean there are all kinds of factors of that sort that go into the consideration.

Taking a manufacturer like the Wrigley Company, which manufactures 15 or 20 kinds of chewing gum, and has been for years, as to whether it is my professional opinion that such an advertisement as Larson Exhibit 50 in any way helps sell any of the Wrigley Company's gum, nothing specific being mentioned on that advertisement, I will say, the name "Wrigley's" on a package of gum which I was unfamiliar with, never having seen advertised, would raise a serious question in my mind whether it was made by the genuine Wrigley Company. I am under the impression, in other words, through the advertising that has been done, that Wrigley manufactures Spearmint, Juicy Fruit and Doublemint, and P.K.s,
4978 not shown here, but if I saw "Wrigley's" some other sort of gum, I would have a question in my mind. On the other hand, there is a certain value in the name "Wrigley's" that, if I saw it on a gum and the other gums were not as familiar to me through advertising and other channels, I would give the benefit of the doubt to Wrigley's, there is some slight value there.

As to whether the United Cigar Stores' name would have any value to a person engaged in the business of selling cigars, I will say, that's a specific instance of these varying factors, against part of the traditions or

result of being steeped in a particular industry. The United Cigar Stores' selling of a product is not a particularly helpful factor in the minds of a great many manufacturers. Without mentioning names, there are a number of cigar manufacturers who do not care to have
(3809) their cigars sold through the United Cigar Stores.

If I had a brand of cigars and was enabled through some arrangement to put on the cigars "United Cigar Stores" such and such a cigar, I would consider that a liability rather than an asset, but that is due to these other factors that I have referred to. It is not just ad-
4979 vertising I mean, it is a question of bad will, if we could coin such a word, instead of good will. I mean there are factors of how they have done business and their methods of doing business and things of that kind.

I have noticed in the Wrigley advertisements here and there references to the particular product being a new product, like Doublemint being a new product, or there being two of a kind, or three of a kind. Some of those advertisements have some introductory remarks in them.

Referring to Larson Exhibit 151, which says, "Three of a kind. Which them is mine," as to what effect that would have on the public in using the notion that Wrigley makes only three of a kind namely, the three mentioned in the advertisement, Wrigley's Spearmint, Juicy Fruit and Doublemint, I will say, until compared with the statement of some one made the statement since my attention was called to it, I was under the impression that Wrigley made the four brands of gum that I have referred to, and was not aware
4980 of the fact that they made other brands of gum. I did not know that they did not, I only had that thought. That impression was caused by the character of the Wrigley Company's advertising which I examined in those books.
(3810) Referring to Larson Exhibit 156, I will say there is evidently a tooth powder or paste that is known as Wrigley's powder or Wrigley's tooth paste. I have seen such advertisement.

My impression was that Larson Exhibit 156 referred to gum, and not tooth paste. That's due to the predominence of advertising on Wrigley's gum.

As to whether in giving my opinion that Larson Exhibit 156 refers to gum, that opinion is one that I am entertaining at present, or one that I have always entertained, I will say, I only knew of this tooth powder

or tooth paste comparatively recently because it was comparatively recently I had seen the advertisement.

I have made no investigation of the advertising the Wrigley Company has done since November, 1918. I have made no examination into the character and type or extent of it, except as I observe the advertisements in the various forms of advertising media.

I understand that the Wm. Wrigley Jr. Company is one of the foremost advertisers of the country in dollars and cents appropriation.

4982 I think the only impression you could get from looking at Larson Exhibit 46 without having seen the books of advertisements or possibly other advertisements shown that the Wrigley Company made only the two kinds of gum there pictured, namely, Spearmint and Doublemint. Of course, I realize that from seeing other advertisements, but looking at this advertisement alone I would get the impression that they made these two flavors of gum. It refers to two flavors, Spearmint and Doublemint, and I would accordingly think those were the two

(4983) flavors they made. They are the only two flavors I would know of through this advertisement if I had not seen any other advertisements.

4984 (Mr. Mayer then asked the witness whether if in the case supposed advertising was substituted for traveling salesmen as a means of getting trade, the value of the advertising in such an instance would not be merely of the same type and character as the value of the salesmen.

Mr. Aldrich objected. The objection was sustained.

4984 Mr. Mayer then asked the witness whether so far as he knew it was not a fact that the value of good will is purely a matter of barter. Mr. Aldrich objected. The master sustained the objection.)

(3812) New York City,

4985 Friday, October 20, 1922. 1:45 P. M.

M. E. GOETZINGER, called as a witness on behalf of the Wm. Wrigley Jr. Company, being first duly sworn, testified as follows:

(The master stated that in view of what had been said to the effect that further testimony on the question of advertising would be cumulative, he would limit the testimony to that given by the witnesses already examined, not meaning to intimate, however, that the other witnesses that Mr. Mayer was ready to introduce would be from the same institutions as those that have already testified.

The master also stated that he understood that Mr. Mayer had his other witnesses on advertising ready to go on the stand.

Mr. Mayer objected to the master's ruling.)

4986 Direct Examination by Mr. Mayer.

My name is Martin E. Goetzinger. I live in New York City. I have been in New York 30 years. I am 56 years old. I am connected with Arbuckle Bros. in the coffee and sugar business.

4987 The coffee business of Arbuckle Brothers is generally acknowledged to be the biggest in the world. It covers the entire United States with the exception of a few of the New England states.

I am an executive of that concern. Arbuckle Brothers (3813) is a firm. I am not a member of it. I have been 20 or more years with that concern. I have never had any particular title. The duties have been quite generally supervisory of various departments of the business, among others the selling and advertising of our coffee packages in which we include the premium scheme of advertising.

I will explain what I mean by our premium system of advertising. Our coffee packages are of paper upon which is printed the signature of the firm. This we call a coupon. The ultimate consumer is permitted to cut

out this coupon from the package and send it to the office for redemption in merchandise shown on a premium
4988 list that is enclosed with every package.

The coffee container is a paper bag, and on part of that bag the signature of Arbuckle Brothers will be found. In order to get a coupon it is necessary to cut out from that paper bag that part of it which contains the signature. The signature is what I refer to as a coupon. We distribute that coffee through wholesale grocers, and they sell to the retailers, and the retailers sell to the consumers. The consumer buys it in the same paper bag that it has when it leaves us. The purchaser of the coffee at retail is the person that ultimately gets the coupon.
4989 We have been issuing coupons in the way I have just described since 1895. Records have been prescribed showing the extent to which we have issude these coupons and the extent of their redemption. The retail purchaser of coffee must pay the price of the coffee in order to get one of these bags. That price has varied from time to time.

(3814) Mr. Mayer asked the witness what was the selling price of the packages of coffee containing these coupons during the years 1914, 1915, 1916, 1917 and 1918. Mr. Aldrich objected and the objection was overruled, the witness stating that his objection would stand to all similar questions.

The witness then continued:

The selling price of these packages of coffee containing these coupons in 1914 ranged from 14.85 cents per pound to 15.40 cents per pound; in 1915 it ranged from 14.40 cents per pound to 15.30 cents per pound; in 1916, from 15.30 cents per pound to 17.10 cents per pound; 1917, from 16.65 cents per pound to 18 cents per pound; 1918, from 17.10 cents per pound to 23.40 cents per pound.
4990 Those packages of coffee containing coupons weighed that were wrapped in paper 1 a pound.
4991 During the period from 1914 to 1918, inclusive, the price of our coffee to the retail consumer, would fairly average 5 cents a pound in advance of our price plus the freight from New York to the retail center. In 1914, the retail purchaser of a pound of coffee had to pay from 20 cents to about 23½ cents a pound, plus freight. The coupon had a cash redeemable value for the last 8 or
4992 10 years of one cent.

It was also redeemable in merchandise. Its redeemable value in merchandise varied with the value of the merchandise, according to market conditions, say from one to 2 cents.

Our intention was to make the coupon redeemable in merchandise of the value of one cent, but when the price
(3815) of merchandise went up, as that did, doubled and almost trebled in some circumstances, naturally the value went up, the cost to us.

We did not increase the number of coupons that were needed to get a particular article. We took that loss ourselves. We found the cost to us of those articles which we redeemed for coupons went up materially. 1920
4993 was our high water mark.

I am in a position to state the annual redemption percentage of these coupons beginning with the year 1908 down to and including 1918, and also the redemption percentages since. I can state the percentage which the number of redeemed coupons in any one of those years bore to the number of coupons issued in those years. Those percentages, beginning with the year 1908, were as follows: 198, 89.65%; 1909, 83.73%; 1910, 66.66%; 1911, 98.29%; 1912, 92.79%; 1913, 75.34%; 1914, 72.48%; 1915, 70.26%; 1916, 63.87%; 1917, 64.43%; 1918, 46.99%.

4994 74.19% is the percentage which our coupons redeemed in the 11 year period named bears to the coupons issued by us during the same 11 years. That, let me explain, is not the average of this percentage, but the average of the actual redemptions, the actual business, reflects our business transactions. I have stated the 11 percentages. I don't take the average of those 11 percentages, but give the actual average of our redemptions during those same 11 years. That is to say, I have figured up the number of our coupons which we issued from 1908 to 1919, both inclusive, and I have figured the number of coupons that I have redeemed during the same 11 year period, and the number redeemed is 74.19% of the number issued in that period.

(3816) 59.36% is the percentage number of our coupons re-
4995 deemed in the year 1919 bears to the number of our coupons issued in that year.

59.70% is the percentage of coupons redeemed by us in the three years 1919, 1920, and 1920, bears to the number of coupons issued by us in those three years. In

other words, I have taken the number of coupons issued in those three years from the number of coupons redeemed in those three years, and the redemption number is 59.70% of the issued number.

4996 7177% is the percentage number of coupons redeemed by us from 1908 to 1921, both inclusive, bears to the number of coupons issued by us during the same period. I cannot state what per cent. the total number of coupons issued by our concern from the time it began to issue coupons down to and including 1921 bears to the total number of coupons issued during the same period.

Our coupons have to be redeemed in New York City. At one time for a few years we had a redemption office in Pittsburgh. New York and Pittsburgh are the only two places where our coupons could ever be redeemed. I have a premium list here. That list, speaking generally, contains pictures and descriptions of various articles, silverware, scissors, umbrellas, and knives, and so forth, with the number of our coupons needed to get the particular item. It also contains a picture of Arbuckle

4997 Brothers' signature, which is supposed to be a duplicate of a coupon, and the document also contains instructions directing the person to cut them out and send them to us.

(Mr. Mayer offered the premium list in evidence. Mr. Aldrich made the same objection that he had theretofore made to similar offers.

(3817) The objection was overruled.

Said premium list issued by Arbuckle Brothers was received in evidence and marked Wrigley Exhibit 43.)

(3818) We haven't any custom by which we can accurately identify the time of the issuance of all of these coupons. The coupons are not dated, but the form of them was changed twice within the last ten or twelve years, and that gives us a little key to go by. The coupons that we have issued eight or ten or more years ago are still coming in. There is no time limit within which our cou-

4998 pons have to be redeemed. I would say that the total number of coupons that our concern has issued from the beginning has been in excess of two billion.

Cross-Examination by Mr. Aldrich.

I got those figures from our records. Those records are kept in book form. They are under the immediate

supervision of the office manager, Mr. H. C. Schuetz. He is located in New York at the general offices of the Arbuckle Company.

4999 I personally went over these compilations which have been produced here. I had occasion to do that within the last 10 days.

I was first spoken to about this case two or three weeks ago by Mr. Lane and Mr. Shield. The first request was to know what plan we had established for a sinking fund to take care of outstanding coupons at the end of a year when the books were closed.

My answer to that was that we had no sinking fund. Then some questions were asked me as to the percentage of our redemptions, our general scheme of operation. Well, general scheme of operation, I guess that covers (3819) about the course of the questions.

Arbuckle & Company sell several brands of coffee. That coupon arrangement did not apply to all brands of 5000 coffee, but applied only to two. Those two brands are known as Arbuckle's Ariosa and Arbuckle's Ground Coffee. Our distribution is to the wholesaler. The wholesaler is the only one that has direct contact with us in the first instance, except in a few localities where we sell to the retail trade. The wholesaler deals with the retailers, and we rely on the retailers to reach the consumers. We advertise quite extensively. Except in rare instances neither the retailer nor the wholesaler act as 5001 intermediaries in gathering up these coupons and sending them in for redemption.

We have had so-called coupon dealers present coupons for collection, but they have not been working with us or for us. We get the coupons through the mails.

I am a general executive of Arbuckle & Company. Perhaps I can explain my connection most readily by saying that only one of the partners is active in the management of the business, and I am next in line to the managing partner. My duties are not confined to any one department.

When I state that the values of the coupons increased when our goods advanced in price, I meant that only in the sense that the same coupon got a larger merchandise value. Let us reverse that by saying that the premium that a customer receives for a coupon cost us more and was worth more than it was before. At the same time

that the premiums cost more we received a larger price
5002 for our coffee.
(3820) From 1912 to 1918 inclusive there was a steady de-
5003 cline in the per cent. of redemptions, but that is not the period of the advancing merchandise values. That came later. The top of merchandise values was about 1920. The prices went up faster after the armistice was signed than before. It is correct to say that the price of our coffee was advancing from 1915 to 1918. During the period when our prices were advancing, the cost of our premiums advanced. The cost of premiums advanced from year to year down to 1920. It is not quite correct to say that during that same period our percentage of re-
5004 demptions on all coupons issued, to the issues of the particular year steadily declined. You will find that we reach a low mark in 1918 and then went up in 1919 and again in 1920. It is impossible to account for the decline in the redemptions under those circumstances. I am not able to state the percent the total number of coupons redeemed by my concern from the time it began to issue coupons down to and including 1921, bears to the total number of coupons issued during the same period, because I did not come to the house until 1902 and the issue of coupons began in 1895 and I have not refreshed my
5005 recollection as to the period from 1902 to 1908. These redemptions spoken of in each year include, or may include, coupons issued at any time from 1895 on. I am unable to state what the outstanding coupons were at the time when my computation begins, that is in 1908. About ten years ago we changed the design of the coupon slightly and six or eight years ago we began printing the cash redemption value on them. Those, I think, are the only marks or keys that I could resort to to distinguish the coupons of an earlier date. I said that between our price to the wholesaler and our price to the consumer there was a difference of about five cents a pound and freight. I may want to correct that a little. I have
(3821) given our net price so it would probably be a little
5005 more than five cents a pound advance that the consumer paid in advance of the prices I have quoted here. There would be in the consumer's price the freight also. The
5006 jobber's list has been deducted from these prices, so the advance would have to include the profit of the jobber and the retailer. I would say that the price the con-

sumer paid over what the wholesaler paid would be from five and one-half to seven cents in advance. I should say that the housewife, buys only for her immediate wants and does not buy a number of pounds at a time so as to get all of the coupons required for some desired prize. I say that because we are advertising always to keep the coffee fresh. I have not observed any practice on the part of retailers to make a sale day of our coffee at so many pounds for a dollar.

5007 UDL M. REINACH called as a witness on behalf of Wm. Wrigley Jr. Company, being first duly sworn, testified on Direct Examination by Mr. Mayer.

My name is Udl M. Reinach. I live at 176 West 87th Street, New York City. I have lived here about ten years. I am Secretary of the Schulte Retail Stores.
5008 They conduct a cigar business at retail all over the country. The Schulte business also runs a premium business. It is called the Mutual Profit Coupon Corporation. I am First Vice-President of that corporation. Its business is the selling of coupons to any class of customers that we can sell them to. We sell cigar stores, drug
5009 stores, grocery stores, department stores wherever we can. The Mutual Profit Coupon Corporation has customers all over the country. The Mutual Profit Coupon Corporation sells its service to any retailer that we can sell it to at so much per thousand, a stipulated price. The retailer who buys our service pays for nothing else but
(3822) the price of the coupons, everything else is gratis,
5009 that is to say, they distribute their coupons and we take care of the redemptions from our premium parlors and other methods, such as mail order. The retailers distribute these coupons with their sales to their cusomers.
5010 The smallest retail value with which coupons are issued is five cents with which they receive a one-half coupon. I have samples here of what I call a one-half coupon. If a person buys ten cents worth at a retailer's handling our coupons, he receives one whole coupon. There are exceptions to the rule that with each five cent purchase a purchaser gets the equivalent of a one-half coupon. For instance, one of our customers may give out on Saturdays, as a special inducement, ten certificates with a

dollar sale. Five coupons represent one certificate and we speak of everything in terms of certificates, we never mention coupons. We issue a document that represents
5011 a half coupon; another that represents two coupons; another, four coupons and another, five coupons. I don't know whether we use the three any more or not. Then there is the one-half certificate. I have here samples of
5012 coupons. They are No. 1, No. 5, No. 2-½ and No. ½. We have no unit in coupons. Our unit is one certificate representing five coupons. A coupon is double the value of a one-half coupon. (Mr. Mayer than offered in evidence a one-half coupon produced by the witness. Mr. Aldrich objected for the reasons theretofore stated upon the record. The objection was over-ruled. Mr. Aldrich stated that he wanted the objection to apply to all of the coupons that the witness might produce and all offers of coupons, for reason theretofore stated on the record in objecting to similar questions. The Master said it
5013 might be so understood. Said one-half coupon was offered in evidence, was received in evidence and marked Wrigley Exhibit 44.)

(3823) The one-tenth certificate and the one-half coupon are
5014 identical. "½" is printed conspicuously on the face of Wrigley Exhibit 44.

The next denomination used by the company, that is, the Mutual Profit Sharing Corporation, is a No. 1 coupon, which is one-fifth of a certificate. (Mr. Mayer offered a No. 1 coupon, produced by the witness, in evidence as Wrigley Exhibit 45. It was received in evidence over the objection of Mr. Aldrich and marked Wrigley Exhibit 45.)

5015 (Wrigley Exhibit 45).

5016 The next issue after No. 1 coupon is a No. 2 coupon. (Mr. Mayer offered in evidence a No. 2 coupon produced by the witness. It was received in evidence and marked Wrigley Exhibit 46.)

5016 (Wrigley Exhibit 46).

5017 The next higher coupon used by my company is a one-half certificate or two and one-half coupons. (Mr. Mayer offered in evidence the one-half certificate referred to by the witness. It was received in evidence and marked Wrigley Exhibit 47).

5017 (Wrigley Exhibit 47).

5018 The next higher coupon issued by my company is one

certificate or five coupons. (Mr. Mayer offered in evidence the certificate, representing five coupons, produced by the witness. It was received in evidence and marked Wrigley Exhibit 48).

5018 (Wrigley Exhibit 48).

(3824) Next to the No. 5 coupons or one certificate, we issue
5019 a document representing two certificates or ten coupons.

(Mr. Mayer offered in evidence such a coupon of the denomination of ten coupons or two certificates. It was received in evidence and marked Wrigley Exhibit 49.)

Wrigley Exhibit No. 49.

(3825) The next higher certificate is a document which
5020 represents fifty coupons or ten certificates.

(Mr. Mayer offered in evidence such a document representing 50 coupons or ten certificates. It was received in evidence and marked Wrigley Exhibit 50.)

Wrigley Exhibit No. 50.

(3826) The coupons that I have referred to are the only
5021 coupons that we are now using. When I speak of 5 coupons, I mean a sheet of paper that is the equivalent of 1 certificate. In order to get a No. 1 coupon the purchaser at a retail house must purchase ten cents worth of goods, and in order to get one certificate it is necessary for the retail customer to buy fifty cents worth of goods. If a purchaser buys a dollar's worth of goods
5022 in a retail store using our certificates, four or five days of the week he gets two certificates. Friday afternoons and Saturdays he might gen ten if we happened to have a deal on.

Ordinarily a dollar purchase is the purchase of two certificates, but there are occasions and exceptions when he will get ten certificates instead of two for a dollar. That is to induce and increase sales on those particular days.

5023 I will bear in mind that the word "collector" means a person patronizing the retail store that handles our certificates and coupons.

5024 The retail value in merchandise of a five coupon certificate such as Wrigley Exhibit 48 is between a cent and a quarter and a cent and a half. The redeemable value of a half coupon such as Wrigley Exhibit 44 is one-tenth the redeemable value of one certificate. The redeemable value of a No. 2 coupon is one-fifth as much as the re-

deemable value of a No. 1 certificate. That proportion applies with respect to all of the coupons and certificates and fractions thereof. These various coupons, fractions or multiples thereof and certificates redeemable in merchandise, and are not redeemable for anything but merchandise.

I have brought a catalogue of the merchandise for
(3827) which these various coupons and certificates are re-
5025 deemed. These catalogues are issued once a year.

The Mutual Profit Coupon Corporation began to issue coupons and certificates in the manner testified to on July 1, 1915. Generally speaking, the catalogue that I have referred to gives illustrations and descriptions of the various articles of merchandise for which our coupons and certificates are redeemed and also specify the number of coupons or certificates required to redeem the various articles. It also contains instructions to the collector as to how they can be redeemed and that they can be redeemed by mail or in person, and instructions as to how to express or mail them and the cost of doing that.

(Mr. Mayer offered in evidence the said catalogue of premiums produced by the witness. Mr. Aldrich objected. The objection was overruled. Said catalogue was received in evidence and marked Wrigley Exhibit 51.)

(3828) If the collector wants merchandise for his coupons
5026 or stamps, he must go to one of our premium parlors. You see, at any of the out of town Schulte stores, any customer can go in and make arrangements and get the merchandise they want. In some out of town places we have our own premium parlors. There are places where there is more than one merchant handling our coupons.
5027 There are places where there might be a drug store that handles them and also a cigar store that handles them. In such a place a person who got some of these coupons in a drug store could go into the cigar store in the same town and turn them in for merchandise.

We have in probably fifteen or eighteen cities merchandise in our stores where they can redeem the coupons or certificates for merchandise right there; in other places the Schulte stores are instructed to get the merchandise in the quickest possible time for these coupons which are left there and it possibly takes two days. In other words, all the Schulte stores are available to

holders of coupons and certificates to exchange for merchandise where we do not have premium parlors. In
5028 places like Chicago where we have our own premium parlor, the customers cannot go into a store and redeem these coupons.

There are 46 cities in which there are Schulte stores. If the holder of these coupons and certificates does not want to get the merchandise in the way I have just stated, he could mail the coupons on direct to New York. There is considerable mail order business.

I can state how many certificates the Mutual Profit Coupon Corporation issued from time to time since it has been in business. I refer to our issuance always in certificates.

(3829) From July 1, 1915, to September 9, 1916, we issued
5029 13,846,236 certificates and during the same period of time we redeemed, according to this list—this list was gotten up for me by my auditors, and I have every reason to believe it is correct—we redeemed from July 1, 1915, to September 9, 1916, 4,931,222. I have the percentages which the number of certificates deemed bear to the number of certificates is sued during the various periods. In the first year from July 1, 1915, to September 9, 1916, that percentage was 35.61. From September 9, 1916, to August 31, 1917, 11,753,524 certificates were
5030 issued, and in the same time 8,162,404 certificates were redeemed, and the percentage redeemed was 69.44. From August 31, 1917, to August 31, 1918, 7,323,126 certificates were issued by us. The amount redeemed during that period was 5,734,324. The percentage was 78.36.

The next period of August 31, 1918, to August 31, 1919, issued 5,894,759; certificates redeemed 4,478,282. The percentage was 75.97.

August 31, 1919, to December 31, 1920, is sued, 8,020,789; certificates redeemed during the same period 4,191,231; percentage 52.25.

December 31, 1920, to December 31, 1921, issued, 6,603,370; redeemed, 7,600,313; the redemption was 115.09 per cent.

The total number of certificates that were issued from the commencement of the Company's business July 1,
5031 1915, to December 31, 1921, was 53,441,802. The certificates redeemed during the same period of time were
(3830) 35,097,779 certificates, and the percentage was 65.67.

There is no time limit within which these certificates and coupons have to be redeemed. I can tell whether any of the earliest coupons or certificates issued by my company are still coming in for redemption. I can tell that because the kind of paper which is used when we first started issuing coupons is slightly different than we are using today. Those old coupons that were originally issued by us are still coming in for redemption.

5032 *Cross-Examination by Mr. Aldrich.*

I can state the number of each of the half coupons, the one coupon, and the two coupons and so forth which I have that my firm has issued. I have expressed the smaller issues in terms of certificates, but the individual amount of coupons that we issued, I have not the figures here. I only have the figures in terms of certificates.

5033-5 (Mr. Aldrich stated that he wanted the witness to prepare a list of the quantity of each denomination of certificates that had been issued by the witness's company, and the number of redemptions of each denomination. The witness stated that he could give the total number of each small certificate that had been issued, but he could not furnish the redemptions of each denomination separately. The witness then stated why he could not furnish the redemptions requested by Mr. Aldrich.)

5036 We have a counting room where there are many girls working, counting and sorting coupons by their denominations. As the girls go along, the coupons are put in thousand lots, and the head of that department will take a list of all these different denominations of coupons (3831) and reduce them to certificate valuation, and that is the record that goes to my accounting department. I will give you another instance whereor why it is that I can give you redemptions in certificates and not in 5037 coupons. For instance, in a premium parlor a customer goes in and redeems and article, we will say, for 100 certificates. That envelope comprises many differen denominations, but must total 100 certificates. The charge against that premium parlor is 100 certificates. The girls in the counting room will count that 100 certificates, or rather, coupons and certificates, and if it checks up with the envelope, will check it, and the charge is made 100 certificates, but do not keep any count of those

particular coupons. Now, the reason we count those coupons and certificates and put them in thousand quantities is because we have special arrangements with one concern, namely, Schulte, whereby we charge them for only those certificates and coupons which come back, and those are first counted and then reduced to certificate valuation.

The Schulte Company practically owns this Mutual Profit Coupon Corporation, but it is run as a separate corporation.

5038 *Neither our traveling salesmen nor the clerks in the cigar stores receive coupons for sales. The Schulte Company only issued coupons or certificates in connection*
5039 *with the sale of merchandise.* **In the case of other stores we sell them our coupons and they in turn distribute them the same as Schulte does, that is, in connection only with the sale of merchandise. No certificates are given out in connection with premiums. We sell those coupons to the stores using them at a stated**
(3832) **price. The price is not always equal. We have different prices, depending on the quantities used. The Schulte Company gets a favored arrangement, but a**
5040 **bigger price. The Schulte Company pays the top notch price, but by reason of their interest and by reason of their making it possible for us to be in business, we made an arrangement with them whereby they would only pay us for certificates redeemed. In other words, when they are redeemed they are paying the top notch price, but their business is so tremendious that it is a better deal for me than as if I made them a lesser price on an out and outright proposition. I would make the same proposition to any chain stores that came along [illegible] ahead of the competition.**

[illegible]

5041 [illegible]

[illegible]

It is not true to say that during the period covered by my report here today, the business of certificates seems to have declined. The first few years—the dates are not clear in my mind—we issued one certificate—let me change that. Schulte issued one certificate with a 25 cent

sale; in the last two or three years they changed their basis of distribution from one certificate with a 25 cent sale to one certificate with a fifty cent sale.

I said that a certain certificate was issued with each
5042 *fifty cent sale. Although Exhibit 48, such a certificate, states at the bottom that it was issued with a 25 cent sale, I will explain that. That is an old sample coupon* (3883) *and it substantiates what I have just told you, that we used to issue these with 25 cent sales. Today we issue this same certificate with a fifty cent sale. This is a certificate we are not issuing any more. I am referring to Wrigley Exhibit 48.*

I cannot state how many certificates in this report that I made as to the total number of certificates are like Exhibit 48, and how many are fifty cent certificates. **It does not make any difference in percentages, as compared with issues and redemptions. It makes no difference what the retailer issues this certificate with, whether a**
5043 **25 cent sale or a dollar sale. It makes no difference to me because this represents a certain amount of merchandise, and when that comes in we pay the same amount of merchandise regardless of what amount it was issued with.**

If our business was a declining business and our redemptions increased, the percentage would be increased
5045 **because the relative relations are changed. But the business is not a declining business, you see, and our figures are pretty nearly correct for the last five years and therefore that does not hold true. If you want to say that if our business is declining and if our redemptions come in then it is true what you say and the percentages are increased, but I do not agree with you on the fact that the business is a declining business.**

5046 **The Mutual** [illegible] **certificates as premiums**
5047 [illegible]
[illegible]
[illegible]
[

5048 *I don't know of drug stores or other places of that kind having certificate days on which they offer in the way of certificates, extra inducements. They use their own judgment on those things. I don't know what they do.*

Wrigley Exhibit 49, which states that it is issued with a 50 cent purchase, and Wrigley Exhibit 48, which is an old form of certificate issued with a 25 cent purchase, and Exhibit 46, which says it is issued with a ten cent purchase, are never issued on more favorable terms to one person as compared with another person, as respects Schulte concerning which I have already testified. The other certificates which I have produced here which do not express a value on the face thereof, have a definite value in connection with the total value of our certificates, being a proportionate value if they are smaller.

5049 **Our redemption stores are about 40 in number. They are places where coupons can either be redeemed or there is merchandise there. Every firm or corporation using our certificates, in whatever business engaged, including Schulte Cigar stores, are not in effect redemption stores which will take from the customers the certificates and see that the merchandise is delivered. That is true of Schulte's cigar stores in cities where we do not have premium parlors, but we do not give that same** (3835) **privilege to other customers whom we sell to. Their customers, if we have no premium parlor in that particular city, must send their coupons in to us in the mail order fashion which we use.**

5050 **I don't see why during 1921 the redemptions should be any more or any less than the regular run of business**

5051 **from Schulte. To my knowledge in 1921, the redemptions ran regularly. There were no more of Schulte than usual, and no less.**

[illegible] tried to account for the large percentage of [illegible] that [illegible] during the [illegible] that [illegible] to me, that [illegible] during the last three or four years. I don't remember just the period.

Redirect Examination by Mr. Mayer.

I said to Mr. Aldrich that I did not regard the business of the United Profit Sharing Coupon Corporation as declining. In the year from September 9, 1916, to August 31, 1917, there was issued about seven and three-quarter millions certificates. In the following year there was issued over (3842) Twelve million certificates, the following year 6,589,400 certificates.

Looking at the number of certificates issued, they were declining. I guess my answer to Mr. Aldrich was more of what I was thinking than I was willing to admit that our business was getting less, seeing the reason for the big figures when we first started was the fact that I had 25 salesmen in New York, and I got a tremendous business around in this district here, and the next year I (3836) had also a large crew here, but I found that business was so unsatisfactory and the money that we made out of it so little we decided to let the whole force go and only take what business came in to us, and of course keep up these old accounts as long as they wanted to buy from us. When that business once died down and reached its level—I mean the forced business by reason of this gang of men, and then together with the issuance of all our customers on the half basis as compared with the full basis, I know that our business today is bigger than it really was then. That is what I meant when I (3853) said the business waaaot declining. I was rather thinking along, when I did not have details, to think our business was increasing instead of decreasing. That's about the size of it.

Referring to Exhibits 46, 48 and 49 that indicate re-issued with a ten cent purchase and a 50 cent purchase, I thinking of the period when we stopped giving them out (3854) thinking of the fact that the amount of the purchase with coupons. We are today issued was blocked out with a paid heretofore on the coupon. a coupon issued with a five cent sale, and the whole basis

is a coupon issued with a ten cent sale. We issue what we call a one-half coupon with each five cent purchase. There was a time when we issued a whole coupon with
(3837) a five cent purchase. Three or four years ago we dis-
5055 continued the whole or one coupon with a five cent purchase. In other words, during the last three or four years it has required a larger purchase in order to get the same amount of coupons than it did at the beginning, and it is taking that into consideration that leads me to say in answer to Mr. Aldrich's question that the business was not a declining business.

Recross Examination by Mr. Aldrich.

(It appeared that in the tabulation from which the witness had testified as to amount of certificates issued and redeemed the word "coupons" had been used instead of the word "certificates", and the witness stated that if said tabulation had been correctly made, the word "certificates" would have appeared thereon in every place where the word "coupons" in fact appeared thereon.)

(3838) October 21, 1922, 9:45 A. M.

5057 (New York City).

MOSES H. RICHARDS, called as a witness on behalf of the William Wrigley Jr. Company, being first duly sworn, testified on direct-examination by Mr. Mayer as follows:

My name is Moses H. Richards. I live at 1391 Dean Street, Brooklyn. I have lived in Brooklyn 47 years. I am 47 years old. I am a salesman for Kirkman & Son, soap people.

I know Mr. Allen L. Brenner. I have been a salesman for Kirkman & Son about a year. I have been connected
5058 with that concern about 28 years, first as a stenographer, and later as manager of their premium department. I have been manager of their premium department 25 years, covering a period since about a year after my commencing employment until about two years ago.

As manager of the premium department, I had gen-

eral charge of everything pertaining to their premium business, selling and supervising of all of the premium work. Those premiums were a general line of merchandise which were given in exchange for coupons that appeared on each of their products.

On each product one coupon appears and then the customer would accumulate a given number of these coupons
5059 and present them to us for redemption for one of our premiums. These coupons appeared on the label, or the carton, that is, the label on the soap wrappers and carton on the soap powders. The socalled coupons were a part and parcel of the cartons or wrappers. In order to redeem the coupons, customers had to cut out the coupons. They first had to unwrap or open the package
(3839) and then cut out the coupon from the carton or wrapper and send them in to our house for redemption. The coupons were exchangeable for premiums which embodied a general line of merchandise. A sufficient number of coupons have to be turned in to procure a designated article.

I cannot tell when Kirkman & Son began to issue these coupons, because it was some time prior to my employment, but I should say it was approximately between 30
5060 and 35 years ago. They continued up until 1920. It has been continuous up to 1920 from the time it started.

These coupons are still coming into our house for redemption. I think the first stoppage in the issuance of coupons that we made was in Buffalo in 1919, and then we stopped entirely in the following year, May, 1920. In 1921 there were 22,430 coupons issued. Those coupons would have a redeemable value of about from fifty to seventy-five dollars, roughly speaking.

When I said that we quit in May, 1920, I ignored the issue of those 22,430 coupons in 1921. None have been issued in 1922.

5061 I can tell how many coupons issued by my house have been redeemed during the year 1922 by months. In January, 198,532; February, 161,296; in March, 135,651; April, 171,649; in May, 73,765; June, 164,974; July, 112,349; August, 167,540; September 135,210.

How long coupons continued to come in for redemption that were issued by us and after their issuance, I know because I have means by which I can tell when our coupons were issued. Commencing about fifteen years ago

on each of our issues we placed a date showing the approximate date of distribution. On the bottom of each coupon is printed a date and these dates were arranged
(3840) at the time the coupons were printed and in nearly every case the coupon was issued approximately the date mentioned on the coupon.

5062 I have here a coupon that was dated September, 1906. The coupon is marked "9-06", nine is the ninth month of 1906. The "06" stands for the year. A coupon issued in February, 1913, would be marked "2-13".

(Mr. Mayer offered in evidence the coupon which was produced by the witness, as Wrigley Exhibit 52: Kirkman No. 1. It was received in evidence over the objection of Mr. Aldrich and was so marked.)

5064 Wrigley Exhibit No. 52; Kirkman No. 1.

(3841) The Master stated Mr. Aldrich's objection would
5065 stand to all such line of testimony.)

Wrigley Exhibit 52 is a coupon that was actually issued by Kirkman & Son and redeemed by it. It was redeemed last Wednesday. It came in for redemption in due course of business.

I have made an investigation within the last few days with regard to the age of coupons coming in to our house for redemption. I went to our premium station and looked over all the coupons that had been redeemed on the day following, which was Wednesday, and picked out promiscuously from those coupons 25. The dates of issuance on those 25 coupons that I picked out promiscuously
5066 run from coupons that were issued about fifteen years ago as well as in the years 1906, 1912, 1917, 1910 and 1909.

There were about 1500 coupons in the lot from which these 25 were taken. That lot of about 1500 came in for redemption last Wednesday in the due course of business. I did not mean to say I inspected each of the coupons that came in last Wednesday. The coupons were placed in a large receptacle and I merely put my hand down in this receptacle and picked out a hundred of them we will say, to get the number, and then I went through with them.

In taking this 100, I took them just by chance without
5067 any effort at selection. In this 100 I picked out 25 that would not be duplicates. For instance, if there were five coupons of the issue of 1906, I merely took out one of them, so that the samples I have submitted here would be the general run of the coupons for that previous day.

I have brought 25 here. The other 75 were of the same dates as those 25. That is, were issued the same dates.
(3842) Two of the 25 were issued more than 15 years ago.

(The witness, in answer to a question in which Mr. Mayer pointed to the two which he said were issued more than fifteen years ago, stated:)

5068 These were issued approximately 15 years ago. We commenced to put the date on the coupons, and all that were issued prior to that time were at least fifteen years ago.

5069 (Said two coupons of Kirkman & Son so issued more than fifteen years ago were offered in evidence by Mr. Mayer. They were received in evidence and marked Wrigley Exhibit 52: Kirkman No. 2 and Kirkman No. 3.)

5070-70½ Wrigley Exhibit No. 52: Kirkman No. 2 and Kirkman No. 3.

(3843) We began dating these coupons about 1905. The re-
5071 maining coupons which I have produced here are dated respectively as follows: November, 1906; March, 1908;
5072 November, 1912; September, 1916; September, 1915; October, 1918; May, 1917; May, 1913; May, 1913; September, 1915; July, 1917; September, 1916; October, 1913; May, 1906; May, 1906; July, 1908; January, 1909; April, 1910; March, 1916; September, 1915; March, 1916; October, 1916; July, 1917; July, 1917; November, 1909; August, 1911; August, 1910; August, 1911; November, 1910; March, 1916; June, 1914; November, 1918; February, 1919; August, 1909.

(Mr. Mayer then offered all the said coupons produced by the witness in evidence. They were received in evidence over Mr. Aldrich's objection, and marked Wrigley Exhibit 52: Kirkman Nos. 1 to 37, both inclusive.)

5074-75 Wrigley Exhibit 52: Kirkman Nos. 19 and 28.

(3844) I have no records that I could submit at this time
5076 showing the number of coupons issued and redeemed by years prior to 1911. Those records have either been lost or put away in our vaults. It would entail a great deal of trouble to get them, if we have them.

Cross-Examination by Mr. Aldrich.

These coupons which I have brought here were picked out of the receptacle that contained all of the redemptions for the day previous. The redemptions last Wednesday

were approximately 1500. I have picked out at random without any selection whatever about 100. I then se-
5077 lected, not promiscuously, but selected the coupons which I have brought here of the dates named. I cannot say that this procedure represents an average of the redemptions made by our company for every day. I said I could not tell you without going over them for several days.

I cannot state whether the average day's selection carries such a large percentage of 15 to 10 year old coupons, because since I have left the coupon end of our business the condition has changed, and I have not examined any coupons for the past year, excepting on last Thursday when I went in and picked out this bunch of coupons. I did not pick out a bunch of coupons at a time when I understood that it was the desire of counsel who called me as a witness to show the Master that there was a large
5078 number of very ancient or old coupons redeemed. I will tell you how I came to select these in that way. Our Mr. Brenner told me that they wanted some information regarding our coupon industry, and I went to the premium
(3845) store to ascertain as to about how many coupons were coming in a day, and I telephoned and asked the girl to save the coupons that were redeemed on the day previous and then picked up these coupons and looked over the dates, approximate dates, and went back to my office and brought them over here. Last night Mr. Brenner asked
5079 me to bring some coupons over that would show the date of the issuance, and I was not at my office, and they brought the coupons to my home. I made the selection before I had any advice as to the kind of coupons I was to select, at about nine o'clock Thursday morning. I made the selection which I brought here because I realized after my talk with Mr. Brenner that I would be able to give some evidence showing how many coupons were now being redeemed and the nature of those coupons.

The first day Mr. Brenner spoke to me about it, he told me that he had been over here the day previous and that I would be called to give some information as to the coupon business, some information that he was not in a posi-
5080 tion to give when he was here the day previous. He said that information was a list showing the number of coupons that we had redeemed and issued since 1911 and asked if I could locate my records showing the issuance

and redemption of coupons prior to 1911. After making a search, I reported that we could not find the records prior to 1911 without going into the vault. Mr. Brenner also said that they would want some coupons that we had issued with our goods. I was given nothing with respect to dates. Nobody told me that I was to select coupons of an early date. No information of any kind was given me until last night.

5081 (3846) I actually made the selection Thursday morning. I was not given any information as to the kind of coupons that were desired until now, except that Mr. Brenner said that there was wanted some coupons we were now redeeming, and I went there and brought over, I said approximately 25—there were 35 there. I did not know until this very date as to what was wanted.

As to whether I want the Master to infer from the coupons I have brought here that ordinarily the coupons issued by Kirkman & Son during the time they were issuing coupons were held by the coupon owners or holders through a term of years, I will say I am producing these coupons as evidence, and I am assuming nothing.

5082 In my opinion I would say that the coupons I have brought here are a fair representation of the relation of redemptions to the date of the issue of the Kirkman coupons.

5083 "Q. Did you mean by that that you think that last Wednesday's redemptions would be a fair representation of the redemptions that you have testified to for each day since January 1, 1922, as given by you this morning?

A. Well, I could not tell you because I have not been in contact with the premium business for over a year."

At the time I was in contact with the coupon end of the business I would say that it was my observation that the ordinary redemptions were not close to the date of issue. It is my experience that the collectors of our coupons held them for a long time, varying from months to years, before they offered them for redemption. I could not answer how old the large percentage of coupons were that were offered for redemption when I was in contact with that end of the business. I never had occasion to consider that question until last night.

5084 At the time I made my selection, I had no request or instructions as to the character of my selection. I have just testified I had information that I would be asked for

some information on the coupon business, but no direct questions on the matter we are discussing now. I never saw Mr. Lane or Mr. Mayer prior to this morning. I have never seen any representative of the Wrigley Com-
(3847) pany prior to this morning. The only person I have talked to with reference to this matter was Mr. Brenner. That was after he had been examined here. He did not bring to me from anybody else any request as to the nature of the information to be elicited, so that the only source of the information which I had was from Mr. Brenner.

5085 I will state why I did not keep the coupons I picked out on Thursday morning rather than have them delivered at my home last night. The coupons were placed in my desk at my office and I was told that I would not be wanted to testify this week. I go to my office but twice a week. Last night, when I telephoned on business, Mr. Brenner had said that I would be wanted to testify here this morning and I asked him if he would have a boy take the coupons from me desk and deliver them to me home so I could bring them here. I did not select from the hundred that I spread on the table before me all the old ones. I merely took from this bundle of approximately a hundred, as I said, a representation of the dates as appearing in this bundle. I do not know that I only had 25. I said approximately. I took what I thought was 25 in my hand. I may have been mistaken as to the hundred in the same way as I was as to the 25. Most of the hundred were not of a recent issue. They were of the issue that is represented by that bundle I brought here. Most of the hundred were of the issuance, the date of issuance as appears on this bundle I brought here. Most of the hundred, like those I brought here were of an ancient vintage.

5087 I examined the hundred after I got them out on my desk. I merely picked out an average. That will average the way the coupons run.

(3848) I think I am able to state about the other 75, how many were of 1919 and how many were of 1918, and how many were prior to fifteen years ago. As I previously stated, this bundle of coupons, approximately 100,—the dates that are represented on this bundle of approximately 25 are a very fair representation of it.

No one can tell whether all of the coupons of recent issue were redeemed soon after we discontinued issuing

coupons. As to whether the large percentage of them, in my opinion, were redeemed soon after our announce-
5088 ment of discontinuance, I will say again that no one can tell, because at the time of redemption of coupons no accurate record is kept of the date on each coupon redeemed so that your opinion is just as good as mine on that matter.

I will state how I was able to ascertain the percentage of redemptions to the percentage of issue in the absence of books showing the dates of redemptions. We take the number of coupons redeemed for a given year, and then the number of coupons issued for that year, irrespective of the dates on each particular coupon. At no time in the history of Kirkman & Son have we kept a record showing the redemptions of various issues separately. We never
5089 have kept any figures showing within what time the larger proportion of any particular issue is redeemed.

Taking last week's redemptions as a basis, I should say that the redemptions we are now engaged in making in the year 1922 are mainly of very old coupons.

The coupon was a part of the soap wrapper. The consumers save only the coupon cut out from the wrapper. The coupons all were redeemed, and so advertised, for (3849) premiums, but where a dealer or broker of coupons
5090 would offer to us a goodly sized number of them, we would redeem them on the basis of 25 cents a hundred.

In the sale of soap, I think the dealers have sale deals in which they offered so many bars for a dollar or similar arrangement. The greatest number that I can recall, that is, the greatest number of cakes of our Borax soap for 25 cents was six. That is six cakes for 25 cents. On sale days when they offered a number of cakes for a dollar, they would sell 24.

Our sales are largely to people of the middle class,—
5091 laundresses, housewives, and so forth. That is the ultimate consumer. We never dealt with the ultimate consumer directly, so far as the sale of the soap was concerned. We dealt with grocers. We have some regular jobbers that we dealt with under a regular scale.

Our business was done in the eastern, the Atlantic states. I imagine that when these sale days occur, the retailers would sell a lot to laundresses at one time. Soap
5092 improves with age. It lasts longer, as they think, if the wrappers have been removed and it is allowed to dry.

So that if a laundress bought in considerable quantities she would take the wrappers from it and let the soap dry and use it as she wanted it.

Redirect Examination by Mr. Mayer.

In my opinion, the average number of bars of soap containing coupons that a housewife would be likely to buy at one time would be the two bars of Borax soap. I
5093 would say the average purchase by the housewife, or ultimate consumer, of our floating soap and our soap powder, or other articles that contained coupons would be one package of cleanser and one package of soap powder,
(3850) and one bar of floating soap. There was one coupon with one bar of floating soap and one coupon in each package of cleanser and powder.

Recross Examination by Mr. Aldrich.

Borax is a laundry soap. I should say the average family would use from one to two bars of laundry soap a week. I think on those sale days by the wholesalers, it is the custom of the wholesalers to make soap an attraction to bring customers for other goods and attempt to sell large quantities of it each week.

5094 October 23, 1922, 10:30 A. M.

(New York City.)

CHARLES S. PARSONS, called as a witness on behalf of the Wm. Wrigley Jr. Company, being first duly sworn, testified on direct-examination by Mr. Mayer as follows:

My name is Charles S. Parsons. I live in New Rochelle, New York. I have lived in or about New York City for 35 years. I am sales director of Borden Sales Company.
The Borden Sales Company sells and distributes the
5095 products manufactured by the Borden Company: Condensed milk, evaporated milk, etc. The Borden Sales Company is a sales agent.

The Borden Sales Company handles condensed milk,

evaporated milk, malted milk, dried milk and milk chocolate. In other words, products manufactured from milk. We have a national distribution of those products.

(3851) The Borden Company has been manufacturing and selling those products throughout the United States for sixty years. It is the largest concern of its kind in the country.

I have been connected with that concern for twenty years. I have been in the selling end throughout that period.

5096 That company has used premiums or coupons in its business for the full period of twenty years, directly and indirectly. I will explain that. The Michigan Condensed Milk Company, manufacturing and selling certain brands of condensed and evaporated milk, issued premiums to consumers. The Michigan Condensed Milk Company was purchased outright by the Borden Company in 1902 and the manufacture and distribution of those brands carrying premium coupons was continued thereafter by the Borden Company through the Michigan Company which was maintained as a separate organization up to 1914. Thereafter the manufacture of those brands and the distribution of premiums was continued by the Borden Company.

Our records of the issue of those coupons run back to 1910. From those records it is possible for me to tell how many coupons were issued by the Borden Company annually beginning with 1910 and since, and how many coupons were redeemed annually by the Borden Company, or its predecessor.

5097 I will state in a general way how these coupons were issued by the Borden Company and its predecessor. We wrapped a label around each can of evaporated and condensed milk. A certain part of that label, the face of the label, is designated as a premium coupon. The consumer is required to cut from the can the coupon part of that label and bring it or send it to us for the premiums which he or she desire to get.

(3852) I have brought here seven samples of those labels. The condensed or evaporated milk or product, in connection with which these labels are issued, is all packed in tin cans. That has always been the practice. These labels I have brought here are fastened on the outside of, or around those tin containers.

5098 (Mr. Mayer offered in evidence the said labels as Wrigley Exhibit 53: Borden Nos. 1 to 7, inclusive. Mr. Aldrich objected for reasons he had theretofore stated in connection with similar offers. The objection was overruled, and the Master stated the objection would apply to all the testimony along said line.

Said labels were received in evidence and marked Wrigley Exhibit 53: Borden Nos. 1, 2, 3, 4, 5, 6 and 7, respectively.)

5099-5105 Wrigley Exhibit 53: Borden Nos. 1 to 7, inclusive.

(3853) These labels are pasted around the tin cans on the
5106 outside. The center panel of the label, the coupon part which the consumer is required to bring in, has no paste on it so it is easily detached from the can. We distribute our products, generally speaking, through the wholesale and retail grocery trade. The housewife gets this milk at the retail grocer. We do not sell those brands throughout the United States. The sale of those brands is limited to the east—well, I might say to the northeast part of the country. We go as far west as the western part of Pennsylvania, as far south as South Carolina and in-
5107 clude all of the states in the northeastern part, all the New England states, all the north central states, and so forth. We sell these products in Pennsylvania. We sell as far west as Pittsburg. That includes the western and northern part of Pennsylvania. We also cover all the New England states and all the north central states. We sell in South Carolina. South Carolina is the southern boundary of our premium business, you might say. Speaking generally, these cans of milk are ultimately pur-
5108 chased by the housewife for home consumption. The ultimate consumers or collectors of these coupons or labels, in order to get a can containing one of these coupons, must pay, seventeen, eighteen or nineteen cents, depending upon the locality in which the milk is sold, with the exception of the Pearl Brand label, indicated by Borden No. 7, which is an evaporated milk. A can of evaporated milk costs the consumer but ten or twelve cents. The other types of coupons marked Borden 1 to 6, both inclusive, are issued with condensed milk. Referring to the condensed milk represented by Borden Exhibits 1 to 6 inclusive, I will say that in 1914 a can of condensed milk could be purchased by the consumer for ten cents. Dur-

(3854) ing the war period that retail price advanced as high
5108 as twenty-two cents. It is now back to sixteen to eight-
5109 een cents. I would say the high peak price was in the latter part of 1920. A can of condensed milk, beginning with 1914, constantly went up until November, 1920. In 1914 that evaporated milk, represented by Borden No. 7, was sold at eight cents a can or three cans for twenty-five cents. During the war period the price advanced as high as fifteen to eighteen cents per can. It is now back to ten or twelve cents per can. The price of it was constantly
5110 going up from 1914 until the latter part of 1920 when it reached the peak. The retail price of condensed milk has not been less at any time since 1920 than it is now. From my experience in the business, I would say that one to three cans would be the usual quantity of evaporated milk and of condensed milk that would be bought at retail by the housewife or for domestic consumption. I do not include cream as condensed milk. Evaporated milk,
5111 which contains no sugar, and which used to be called condensed cream, and condensed milk, which is preserved by sugar, are the only two forms of preserved milk which are put up in cans. The ultimate consumer of one of these tin cans containing either evaporated or condensed milk, if she wants to utilize it, must detach the label part which is a coupon. At the present time the coupon is worth about thirty-seven cents per hundred labels to the collector. The redeemable value of these labels since 1910 has varied from perhaps thirty cents a hundred to forty cents a hundred labels, that is, in merchandise. Our coupons have never been redeemable in anything
5112 other than merchandise. It is necessary for the collector to send in a definite number of coupons in order to redeem them, because of the fact that we list our premiums under definite label values. We offer a certain article for twenty-five labels and certain articles for fifty
(3855) labels, and so forth. In order, therefore, to convert
5112 the labels into anything of value, the collector must send in such a number as will enable him to get a specific piece of merchandise. That is the only requirement with regard to the number of labels that must be sent in in order to redeem them. We have issued, since we have been in the premium business, various lists showing what the merchandise was for which these labels could be exchanged. I have brought one here as a sample, which

5113 indicates it was issued in May, 1922. It is a fair illustration of the general make-up of the premium lists that we have distributed. These premium lists contain general instructions with regard to the method of redeeming coupons and pictures of the merchandise that is exchangeable for coupons and the number of labels required to get a specific article that is referred to in the mailing list. Referring to the May, 1922 premium mailing list and the picture of the knife on the second line from the top and under which the figures "847" appear, I will say the figures "847" give the article illustrated a number for the purpose of identification, both by the consumer and by ourselves when issuing the premium. The consumer by referring to the type matter below finds that
5114 No. 847 is described as a paper knife which is given for fifteen labels. (Mr. Mayer then offered in evidence the said premium list. It was received in evidence over Mr. Aldrich's objection, which the Master said would apply to all questions along said line, and marked Wrigley Exhibit 53, Borden No. 8). In order to redeem it was necessary for the collector to forward the labels by mail to 44 Hudson Street, New York City, and the premiums in turn were mailed to the collector. During the entire pe-
5115 riod from 1910 to date, in addition to forwarding the labels by mail, as explained above, the collector could also bring labels to any one of our different premium stores and there select the article which he wished to
(3856) have and take it away with him. My company's
5115 predecessor from time to time between 1910 and date had from twenty to forty of these premium stores. They were located in the Metropolitan district of New York including the nearby New Jersey cities, Philadelphia, Baltimore, Charleston, South Carolina, and other cities in upper New York State. No one of the labels which I have submitted contains the names of all the stores. On the back of each of these seven labels that have been offered in evidence appears the names of the places where these exchanges could be made. In no instance are all of
5116 the places named. Throughout these seven exhibits which I have produced, the premium stores referred to on the back appear to have been referred to by the names of the brands shown on the face of the exhibits. The purpose of that is to focus the thought of the consumer upon that particular brand which he or she may be using,

although all the stores are conducted by and in the name of Borden's Premium Company, Incorporated. They are all part of the business of our company. I should say, without exception those premium stores that I have referred to are located in large cities and large centers of population. They are maintained exclusively for the redemption of our coupons and issuing of our own pre-
5117 miums, so that the collector who went to one of these premium stores could leave his coupons and take away with him the premium.

(3857) There is nothing for sale for cash in those stores, and
5117 there is nothing redeemed there except our own labels. Our coupons and labels are not exchangeable for cash. That is true as to the entire period. When I refer to my concern I mean either the present Company or any of its subsidiaries or any of its predecessors.

Coupons were issued by the Michigan Company in 1910, but the figures covering that redemption are not available; they were destroyed; they became obsolete,
5118 and we no longer kept them; they were destroyed around 1914 or 1915, at the time that the business of the Michigan Condensed Milk Company was taken into the Borden Company proper. That destruction was in the due course of the Company's business.

In 1910 the coupons issued were 44,980,050; the coupons redeemed were 23,002,526. That does not include any that were issued by the Michigan Company. There is a continuous lap-over in our business, and we could not identify those 23,000,000 as being part of that 44 that was the issue of our company during those two periods.

5119 The premium business of the Michigan Company ran back, I should say, until 1900. The following is a table of coupons issued and redeemed from 1911 to 1921, inclusive:

1911: issued, 44,762,000; redeemed, $25,215,245;
1912: issued, 44,507,850; redeemed, 26,721,992;
1913: issued, 45,179,250; redeemed, 28,471,211;
1914: issued, 47,177,000; redeemed, 30,305,871;
1915: issued, 53,823,050; redeemed, 33,348,098;
1916: issued, 52,500,150; redeemed, 33,681,882;
1917: issued, 61,543,750; redeemed, 38,978,873;
1918: issued, 59,680,300; redeemed, 33,011,985;
(3858) 1919: issued, 61,953,650; redeemed, 29,804,729;
1920: issued, 52,351,100; redeemed, 36,323,799;
1921: issued, 43,491,700; redeemed, 26,193,946.

The Michigan Condensed Milk Company issued these coupons from January 1, 1910, to April 1, 1914, and the Borden Company, its successor, continued issuing them from that date to the present. The Borden Company
5120 continued the same brands as the Michigan Company had been issuing; and also began the issue of premiums with other labels which the Michigan Company had not been manufacturing.

When the Michigan Company ceased issuing labels it also ceased redeeming labels as the Michigan Company, so that from the time the Borden Company took over the Michigan Company's business the labels theretofore issued by the Michigan Company were redeemed by the Borden Company in the due course of the Borden's Company's business.

We have had two classes of experiences where specific conditions accelerated the redemption of our coupons. Certain states have passed laws forbidding the issue of premiums after certain dates. When consumers of our brands have become familiar with the fact that labels could not be redeemed in that state after a certain date they have brought their labels to us or sent them to us as
5121 speedily as possible. The other instance which I spoke of is where a rumor has arisen in a certain market that we are going to discontinue the issuing of coupons with our brands. That also would cause consumers to hurry the labels in to us.

(3859) *Cross-Examination by Mr. Aldrich.*

The Michigan Company, at the time it was taken over by the Borden Company, was almost entirely east of the Mississippi River. The larger part of its business was in New England and the North Central states. The Mich-
5122 igan Company had been issuing coupons and premiums from about 1900; it might have been a year or two before that, although I hardly think so. I was connected with the Michigan Company since 1889, and with the Borden Company since the date it was taken over. The principal sales office of the Michigan Company was in New York City. Our original factory was at Lansing, Michigan. We afterwards built other factories in Michigan, and also in New York State.

The Michigan Company was selling perhaps a half a

dozen brands of condensed milk. They were of the same names as the present brands, that is, referring to those brands with the seven labels I have brought here, which were manufactured by the Michigan Company; the names have not been changed.

5123 The list which I produced here this morning was not a list of labels. It was a list of premiums. These brands represented by these labels I have brought here are the only brands with which we are now issuing coupons. That list of brands was complete to cover all the brands with which the Borden Company has issued premiums, for all of the time during which I have had knowledge of the milk business.

(3860) If there was any exception made it was a very minor
5124 exception, which does not remain in my memory.

I could not answer as to how many coupons were outstanding at the time the Borden Company took over the Michigan Company. These redemptions concerning which I have testified include the redemptions of the Michigan Company's issues prior to the taking over of that Company by the Borden Company.

The issue on my tabulation from January 1, 1910, to April 1, 1914, would cover the issue by the Michigan Company. From April 1, 1914, to December 31, 1921, it would cover issue by the Borden Company. The Borden Company issued no premiums until after they had absorbed the Michigan Company on April 1, 1914.

5125 I will state what is included in the Borden Company, its subsidiaries or predecessors. The Borden Company is a manufacturing Company; the Borden Sales Company incorporates, sells and distributes the manufactured product of the Borden Company. The Borden's Premium Company, Incorporated, redeems the coupons issued by the Borden Sales Company, which are wrapped around cans which are originally manufactured by the Borden Company. As heretofore explained, previous to April 1, 1914, the Michigan Condensed Milk Company manufactured these brands with which premiums were issued, and the labels were redeemed by the Michigan Company up to April 1, 1914, and thereafter by Borden's Premium Company, Incorporated, so you see there is quite a confusion of Companes there, and the answer to Mr. Mayer was intended to show inclusion of the entire issue and redemption of those coupons.

It is my understanding that the Borden Sales Company and Borden's Premium Company, Incorporated, are owned by the Borden Company. I am only connected
5126 with the selling end of the business, and I would not want to answer positively in connection with these mat-
(3861) ters.

The principal office of Borden's Premium Company, Incorporated, is 44 Hudson Street, New York. That Company is concerned exclusively with the handling of the premium and coupon end of the business. We have a manager of that Company, who attends to the purchases for all the premium stores. He is the general manager, who makes the purchases for all the premium stores.

5127 The minor book-keeping of the Premium Company covering the details is carried on at 44 Hudson Street; the general books are kept at 350 Madison avenue, at the main office of the Borden Company; reports are first submitted by the individual stores to 44 Hudson street, then reviewed there by the manager, and from those reports a general report is forwarded to 350 Madison,—which enables the books of the Company to be kept.

It is my understanding the Borden Sales Company is another Company likewise owned by the Borden Company. It is the Company that sells the products of the Borden Company. The Borden Sales Company is the Company that issues the product which carries the coupons. Those coupons are put on the cans at the fac-
5128 tories which are operated by the Borden Company. Each can which is sold by the Borden Sales Company, each can of those brands carries one of those labels containing a coupon. When once the can has been sold we consider the coupon as issued, so that the issue is confined to the sales after they have been made.

We use every possible precaution to check up on the actual number of these coupons printed or prepaired; and our printer also uses every possible precaution to safeguard the printing and handling of those labels all the
(3862) way through our factories. Similar precautions are used in the Borden Company's factories, to be sure that every one of those labels which comes into the factory goes on a can. The labels, having a premium value, we naturally watch them about as carefully as we would real money.

5129 The Borden Company does not own the printing shop

where these coupons are printed. They are printed on contract with some printer. The only safeguard that we use to see that only labels that have been attached to cans are redeemed is to watch the labels closely as they come in and identify them by their general style and printing, and so forth. It is always possible to counterfeit one of those labels; there is no question about that. There is nothing on any of those labels that would indicate the date or year of issue, or any serial number, which would enable one to know that it was connected with any particular sale, except the general one of the brand.

These coupons are used in the localities that I have named, for the purpose of inducing the purchase of our brands. They are forms of advertising; so we consider them.

5130 There are other companies dealing in milk products of this character who are using coupons in competition. The Mohawk Company is one. Its headquarters are here in New York; it is now controlled by the Carnation Milk Product Company; also the Nestle Company at 134 Williams Street. I would say that those concerns are our largest competitors in this line of business.

We distribute our premium lists by various methods, at different times. We always have them on the counters of our premium stores, so if a woman comes in she can get a list. We have, in times past, left them in retail grocery stores which were handling brands, and we have occa-
(3863) sionally made a house to house distribution, but the latter method was very rare. That was for the purpose of showing what premiums we issued, and making an inducement for the use of our brands. The other Com-
5131 panies do practically the same.

I would say this is our only form of advertising in connection with these particular brands. In these metropolitan districts our aim is to keep a premium store located in a locality where we hope to induce a large number to become purchasers. Our thought was in locating stores which will be most convenient to the greatest number of our present or future customers of our present brands.

At least seventy-five per cent, and perhaps more, of our redemptions is through the premium stores. I presume that it is a general custom in connection with all products that grocers handle, to offer special inducements

on sale days; and I have no doubt they would occasionally
5132 favor us by including our brands.

I would say that grocers offer special inducements on certain days on all nationally advertised products, and they do include condensed and evaporated milk. I do not believe there is any fixed rule as to what price or what discount they sell on those days. I think that is to a large extent a matter of competition.

We are selling our Magnolia Brand of condensed milk, for instance, to a jobber today at $6.15 a case of 48 cans. That reaches the consumer at 16 to 18 cents. Perhaps at one of these special sales you refer to it might be sold
(3864) by a chain store, or someone else, at fifteen cents. Now, if sold at 15 cents, that's $7.20, which leaves a spread between the $6.15 and $7.20 to cover the profit of the retailer and jobber together.

I imagine these sales are conducted for the purpose of attracting customers to the stores with the hope that they will purchase other articles.

5133 Referring to the fact that in our catalogue we seem to advertise or give instructions regarding the sending of labels only as to Magonlia, Star and Challenge brands, I will say, at this particular period, this particular year, I might say those happen to be the only brands which we are featuring in the outlying districts to which we send that mailing list. That mailing list goes to consumers in small towns and in country districts where it is not convenient for such consumer to come to our own store.

5134 By mailing list I refer to Wrigley Exhibit 53; Borden No. 8. We have another list for stores. I have one here. I will explain why, in Wrigley Exhibit 53:Borden 8, we only give instructions as to three brands, and in the premium list issued October, 1921, we give instructions regarding Star, Magnolia, Darling, Challenge, Pearl, Standard and Peninsular brands of milk. That was because the mailing list, in which only three brands are mentioned, was distributed in localities where only those three brands were sold. Magnolia is sold in the entire state of New York, eastern Pennsylvania, and New Jer-
5135 sey. I would not say positively that none of it went elsewhere, but those are our principal markets.

The Star brand is sold, in particular, in the same territory, and in Charleston, South Carolina, Baltimore and

Washington. This list of places might not be entirely
(3865) complete.

The Challenge Brand is sold principally in New England.

While the back of the coupon for the Challenge Brand names among other redemption stores Baltimore, Maryland, our actual sales of Challenge in Baltimore are very, very small. New England, I stated before, is the principal market of the brand.

As to why we have never extended this system of sales to the Western states or Chicago or vicinity, I can only answer by saying that it has been a matter of sales policy on our part to use other forms of advertising in other parts of the country.

5136 These labels or coupons go into the hands of the housewife, and have a value which induces her in many instances at least to save them.

I stated this is the only form of advertising that we have adopted in the locality where these brands are sold, and where we issued coupons. It so happens that we do no other form of advertising on those brands, and only sell those brands under the premium coupon, with one exception, with one exception which is of any importance. We sell Magnolia Brand in New Orleans with which we do not give a premium. On the other hand, we do no other form of advertising on that brand in that locality. It sells without advertising, I might say.

5137 At one time the Challenge Brand label was also issued in two forms, one of them non-redeemable, but that latter form has been discontinued. Those two brands are the only brands we have issued under two kinds of labels. Our Tip Top brand, such sales as we have of that, are made without advertising of any kind. It is one of our own brands. Onr Eagle Brand Condensed milk is ad-
(3866) vertised in, I might say, every form of general advertising such as magazines, newspapers, street car cards, and so forth.

5138 The statement that we did no other advertising except to issue coupon labels was restricted to the seven brands, coupons labels of which I have produced.

Redirect Examination by Mr. Mayer.

The different forms of premium lists that we used were rependent upon the territory in which certain brands were sold. I might say that we endeavor to encourage the sale of any brand that you are selling in a locality rather than to break in a complete new brand. That's our custom, and we follow that in the distribution of our premium lists.

It is correct to say that the premium lists referred to different premium-bearing articles in accordance with the territory in which the particular articles were sold. We tried to distribute premium lists showing particular products in the territory where those particular products were sold. That accounts for the different forms of premium lists.

5139 I think I stated to Mr. Aldrich that we did no other form of advertising, as I considered the distribution of premiums a form of advertising, and when I said we did no other form of advertising, I referred to visual advertising, such as magazines, newspapers, street car cards, and so forth. We, of course, have a sales force who are using their best efforts to encourage the sale of all our products, and if a person so wishes they might interpret that as a form of advertising.

(3867) In order to answer intelligently as to the number of salesmen we have I would have to say that the sale of our products in a great many markets is through selling, personal commission agents, so-to-speak, so that our direct sales force is not large; our indirect sales force would amount to several hundred men.

5140 We advertised Eagle Brand very broadly, but we do not give premiums with Eagle brand; that is one of our oldest brands; we do not advertise the Milk Maid brand; that is a Swiss brand.

Recross Examination by Mr. Aldrich.

When I said the Eagle brand was our principal brand I meant that is the brand of which we have the largest sales, and is also our oldest brand. It was originated

5141 by the Borden Company. The Borden Company had

been in this same line of business for a great many years prior to the purchase of the Michigan Company.

The sales people of which I have spoken do practically no work direct with the consumer. A salesman, generally speaking, is not supposed to visit the consumer.

I said that on occasions we did distribute those premium lists direct to the consumer, but I was not referring to our salsemen. We would employ other people to do that. We would not ask our salemen to do it.

(3868) New York City.

5124 October 23, 1922. 2:00 P. M.

EDWIN BRADLEY MORTIMORE, called as a witness on behalf of Wm. Wrigley Jr. Company, being first duly sworn, testified as follows on direct examination by Mr. Mayer:

My name is Edwin Bradley Mortimore. I live in New York City, and have lived there for the last seven years. I am treasurer of the Surety Coupon Company. Its principal place of business is in New York City. I have been treasurer of that company since January 1, 1920. I have been connected with it since May, 1915, in the
5143 capacity of auditor, assistant treasurer and treasurer. I am familiar with the books and records of the Surety Coupon Company. I have had charge of them since May, 1915.

The surety coupon business is the conducting of a discount system for retail merchants, and it has been such since I have been with it. We furnish coupons in one thousand, five thousand and ten thousand lots to retail stores, which is a medium for discount. They give a coupon with each ten cent purchase.

The principal places we do business are Brooklyn, Newark, Baltimore, Louisville, Kentucky, Kansas City, Missouri, Oklahoma City, Terre Haute, Indiana, and Cincinnati.

5144 As to the length of time our company has been doing business in those places, the dates vary. The company was organized in 1909. We began business in Oklahoma City the first part of 1922. We have been doing business in most of the places I have mentioned since

I have been connected with the company. We commenced in Louisville and Buffalo, in 1911. I cannot give you the dates when we commenced business in any of the other
(3869) places. We are still doing business in Louisville and Buffalo.

5145 In one of my prior answers I inadvertently omitted Buffalo, as one of the places where our business was being conducted.

I would say that there are about 2200 stores using our system. The number of stores using our system has fluctuated off and on. It has been running pretty close
5146 to 2200 during all of the time.

We sell them for $2.50 a thousand and receive cash for all sales with the exception of our own stores, and they settle once a month. By our own stores I mean the Associated Dry Goods Corporation stores and the Mercantile Stores Corporation. I said "our stores", but the Mercantile is a separate corporation.

The Associated Dry Goods Stores and the Mercantile
5147 Stores Corporation pay us $2.50 a thousand for the coupons.

Anybody that wants to use our coupons in their business pays us for them on the basis of $2.50 per thousand. They all pay the same price. Some pay cash, and some deliver on credit.

Our customers give out these coupons with each ten
5148 cent purchase, and they issue coupon books to their customers and to the collectors. These coupon books are merely blank books, that are used for the purpose of pasting the coupons in. These coupons are worth worth 1.9% discount; in other words, if a collector or customer of the retail store buys $2.50 or $5.00, and receives the coupons, they receive in coupons 1.9%.

The retailers distribute the coupons to their customers on the basis of one coupon for every ten cent purchase.
(3870) The customer of the retailer is called a collector.
5149 When the collector gets one of our coupons he receives the equivalent of a 1.9% discount on his purchase. If the collector saves 1350 coupons, or in half books 675 coupons, the full book of 1350 is redeemable at any retailer's doing business with us for $2.50 in merchandise and the 675 book for $1.25 in merchandise. Those redemptions must be made at some retail store that handles our coupons. Those coupons can only be redeemed at authorized redemption stations. They are no author-

ized redemption stations except those retail stores that buy our coupons from us. We have no premium parlors where merchandise is available for the collector.

5150 The $2.50 in merchandise for 1350 of our coupons, and $1.25 in merchandise for 675 of our coupons, are retail values. Before the coupons are redeemed they must be in books furnished by the company. We furnish books to all; that is, except in places where we have a short redemption. In Louisville we have 120 coupons, and that is worth 25 cents, the same proportion. 120 coupons are redeemable for 25 cents worth of merchandise at retail in Louisville.

5151 That is the only time we have a 600 coupon redemption. In all other places the redemption must be either in 675 or 1350 coupon lots. The coupon is worth a trifle more in Louisville than in any other place. The discount there is 2.12%.

We place a cash value on our stamps, but we have very few calls for cash. On 1350 it is 1.85 mills for each stamp. In Louisville it is 1-7/8ths mills for each stamp. That makes the cash redeemable value either (3871) 1.85 mills or 1-7/8 mills per stamp. We only have very few calls for redemptions in cash, where a collector might move to another city and then write in to us usu-

5152 ally or write in to our local office and state they have these coupons in their possession, and want to know how they can realize on them, and we redeem them on the cash basis.

There is no requirement that our coupons will be redeemed within any specified or fixed period of time. If one of our retail customers issues coupons those coupons can be redeemed at the store of any other of our customers.

(Mr. Mayer stipulated that Mr. Aldrich might have the benefit of an objection to the competency, relevancy and materiality of this witness' testimony, the same as though it had been made immediately at the commencement of his testimony. The objection was overruled, the master stating that the objection might stand to all the testimony of this witness theretofore or thereafter given.)

The witness continued:

5153 My company has changed the form or appearance or printed matter on its coupons from time to time. We have four issues. We commenced the oldest issue in

April 1909. We commenced what we call the first issue on May 1, 1916, the second new issue November 1, 1918, and the third and current issue January 1, 1920.

5154 Our stamps are given out to the collector at the rate of one for each 10 cent purchase or multiple thereof, so that if a person bought a dollar's worth she would be entitled to 10 coupons. As to how the coupons are actually delivered by the retail merchant to his customers or collectors, I will say it is by voucher at most (3872) of the stores, that is, the larger stores, attached to the sales slip, and they are presented to the redemption desks, stamp desks, and there coupons are issued in exchange. Some of the smaller stores give them out right over the counter after the purchase is made, by the clerk.

5155 On the old issue our records show that we issued 2,162,-447,791, to May 1, 1916. During the same period of time 1,753,538,166 coupons were redeemed. From May 1, 1916,

5156 to February 1917, we issued 87,027,000 more of the old issue.

Since May 1, 1917, to August 1, 1922, we have redeemed 349,610,608 of the old or original issue. Coupons of the old or original issue are still coming in for redemption.

The first new issue was commenced May 1916, and completed October, 1919, and in the meantime we started the second new issue, which was commenced November, 1918, and overlapped. We had stock at some of the offices.

5157 None of the old original issue of stamps was issued by us after February, 1917. Of the first new issue, which we began to issue May 1, 1916, we issued, between May 1, 1916, and November 1, 1918, when we commenced the so-called second new issue of coupons, 877,865,000 coupons. In the same period of time, that is to say, from May, 1916, to November 1, 1918, we redeemed 591,-309,195 coupons of the first new issue. We quit issuing any of the so-called first issue of coupons in October, 1919.

The total of the first new issue of coupons that we have issued since November 1, 1918, is 135,339,600. The total amount of the first new issue that we have redeemed at any time since November 1, 1918, is 337,697,512, that is,

5158 up to August 1, 1922. Coupons of that first new issue (3873) are still coming in for redemption.

422,485,000 of the second new issue were issued be-

tween November 1, 1918, and January 1, 1920, when we started on the third new or current issue.

From November 1, 1918, to January 1, 1920, 202,024,638 coupons of the second new issue were redeemed. 77,982,000 of that second new issue of stamps were issued after January 1, 1920. We quit issuing any of that
5159 second new issue in July, 1920; I do not know what date in July. 242,525,137 of that second new issue of coupons were redeemed after January 1, 1920, up to and including August 1, 1922.

1,300,796,260 coupons of the third new or current issue have been issued since January 1, 1920, up to August 1, 1922. 939,784,386 coupons of that third new issue have been redeemed, up to August 1, 1922. Coupons of the second new issue are still coming in.

5160 These various issues of coupons that I have described were used in Buffalo. Up to May 1, 1916, we issued in Buffalo 172,103,230 of the so-called old issue of stamps. That would cover a period from 1911. From 1911 to May 1, 1916, there were redeemed in the Buffalo business 134,231,747 of that old issue of our coupons.

5161 3,753,000 of that old issue were issued in Buffalo after May 1, 1916. Since May 1, 1916, there have been redeemed in the Buffalo office 34,499,833 coupons of that old issue, that is, up to September 1, 1922. Up to November 1, 1918, there were 151,390,000 coupons of the first new issue issued at Buffalo from the date of the commencement of issuing them.

From the time the first new issue was issued up to
(3874) November 1, 1918, 103,516,533 coupons of the first new issue that were issued in Buffalo were redeemed. Since November 1, 1918, we have issued at Buffalo 8,960,000 of the first new issue. Between November 1, 1918, and September 1, 1922, 48,480,628 of the first new issue that were issued at Buffalo were redeemed.

5162 From the time the second new issue of coupons was put out, up to January 1, 1920, 82,788,000 of that second new issue were issued by us in Buffalo. 44,109,703 of the second new issue put out by us at Buffalo were redeemed between the time when the second new issue was put out and January 1, 1920. Since May 1, 1920, we have put out, at Buffalo, 2,212,000 of the second new issue of stamps. At Buffalo we have redeemed, since January 1, 1920, 34,919,539 of that second new issue of

stamps put out at Buffalo. That is, up to September 1, 1922. We have put out, at Buffalo, 216,325,000 of the third new or current issue. 165,535,579 of that third or current issue put out at Buffalo have been redeemed up to September 1, 1920.

5163 We had experiences in Louisville which resulted in the acceleration of the redemption of our coupons. We had legislation trouble there, beginning in February, 1922. A bill was passed by the Legislature of Kentucky prohibiting the giving away of coupons. It was held unconstitutional. It was passed in February, 1922. The bill made the redemption of trading stamps for merchandise illegal. The act became effective June 15, 1922.

6164 Pretty close to the time the law went into effect we filed a bill for an injunction, and secured an injunction. We had a bulge in redemptions after the matter was agitated in February.

(3875) In January, 1922, our percentage of redemptions to
5165 the issue for the same month, in Kentucky, was 95.81. The similar Kentucky percentage for February, 1922, was 213.89; for February, 1921, 106.96; for March, 1921, 95.06; for March, 1922, 116.05; for April, 1921, 85.32;
5166 for April, 1922, 106.80; for May, 1921, 88.18; for May, 1922, 96.36; for June, 1921, 97.36; for June, 1922, 149.59; These percentages are all with regard to the Kentucky issues. In July, 1921, the percentage of Kentucky redemptions to the Kentucky issues in that month were 99.23; for July, 1922, 97.36.

5167 This is the only experience I have had in connection with the matter of accelerating redemptions.

Cross-Examination by Mr. Aldrich.

My company was organized in 1909. I cannot tell what its capital was at that time. Its capital has been decreased, from two million to five hundred thousand. The present authorized capital stock is five hundred thou-
5168 sand. It is all issued, and paid in in cash.

The company is organized for profit, and as a service company to our stores, the Associated Dry Goods Corporation and Mercantile Stores Corporation. There are four Associated Dry Goods stores, and six Mercantile Corporation stores. The Associated Dry Goods stores are located in Buffalo, Baltimore, Newark and Louis-

ville. There are no other or subsidiary stores in the Associated stores.

(3876) When I said four Associated Dry Goods stores I meant there were four of those stores using our cou-
5169 pons. Others of their stores do not use them.

5170 The Mercantile stores using our coupons are Batterman & Company of Brooklyn, The Fair and McAlpin Dry Goods Stores of Cincinnati, Jones of Kansas City, J. Root Dry Goods Store of Terre Haute, and J. Bacon & Sons of Louisville.

The Associated Dry Goods Company and the Mercantile Company have no relation to the other stores using our stamps. Those other stores are groceries, dry goods stores, and small retail stores. We have an ice company, a laundry and some such stores scattered around in different cities, but principally dry goods and groceries. We sell our stamps at $2.50 a thousand and they are redeemed by the customer in books of 1350 stamps and we pay the retailer $2.50 for each 1350 book.

As to the stamps that are sold to the Mercantile and the Associated Dry Goods Companies, we do not only charge them with the redemption; we have one price to all stores, $2.50 a thousand, and the same redemptions.

5171 We make a consignment to the Associated Stores, and the number of pads they use they pay for the stamps at $2.50 a thousand and we pay them for the redemptions in the settlement.

The Associated Dry Goods Corporation owns the stock of our stamp company. The Mercantile stores have no interest in the stock. With the exception of the president and the treasurer, the other officers of the stamp company are officers of the Associated Dry Goods Corporation. That is, they are directors.

The Associated Dry Goods Company pays for the
(3877) stamps used by it by settlement each month.

5172 We keep an inventory account with the Associated Dry Goods Company. The reason for that is we do not know how many pads they are going to use. We consign them a thousand. They may use 450 out of a thousand, and then we actually bill them for the number of coupons they issue during the month to keep our records straight and carry the balance forward. We have them charged with the number of pads consigned to them all the time and we actually bill them for the number they use, other-

wise our stamps are shipped from Scranton, Pennsylvania, and we would have to keep a number on hand. They are sent through our local office and instead of sending a little, small bundle of stamps over every day or two, we consign three or four pads and they use out of that and then at the end of the month we charge them for the exact number they used, and that is found by our local manager in each district.

The account stated on there is credited for the redemptions at the end of the month, the same time the number of books they redeem. They charge us with the number they redeem and they either pay us or we pay them. If the redemption is in excess of the purchases, they pay us; if the purchases are in excess of the redemptions, we pay them.

5173 In making the Buffalo computations I prepared my tabulation so as to show, with the different issues I have mentioned, the issues up to a certain date, as, for instance, November 1, 1918, and the redemptions up to that date.

Then I was asked here as to the issues after November 1, 1918, and the redemptions after that date; as to what was the purpose of making that division of the account (3878) that applies to the first issue and all subsequent issues, I will say, we have been furnishing this report to our directors for some time. We send them a copy. We do that to show the fluctuations, the difference of how the percentage is going, when the first issue was cut off up to the present time, to show the fluctuations in there.

That redemption since November 1, 1918, of 48,480,628 does not include prior redemptions. It includes all issuances from the start to that particular issue.

5174 The 48,000,000 included all issuances of the first new issue only from the time of commencement, but it did not 5175 include stamps of any other issue. Each audit is separate. We keep a separate audit on each issue, so that the tabulation as to the first issue was confined, both in its issuance and in its redemptions to the issue named, namely, the first issue. So that, of a total of approximately 160,000,000 stamps issued we have redeemed a total of about 152,000,000. That is the actual audit.

The figures as to the different issues which I have given here are in each instance confined to that particular 5176 issue. We have a separate audit to take care of each particular issue and segregate the various issuances.

In the old issue we gave away some stamps. The records show that, but that was prior to my time. I think our records show that approximately thirty million free stamps were included in the old issue, and in the figures
5177 I have given here today. I am not sure that I am accurate about the extent of those free stamps.

We do business in Buffalo, but not in New York City; we have no store here, and no organization here. We had
(3879) a stamp organization here at one time, but we discontinued. Our principal redemption station went out of business here, O'Neill, Adams & Company, that's why we discontinued, O'Neill, Adams and Simpson and Crawford.

5178 We have always designated these documents we are talking about as coupons, and not trading stamps. I do not know of any special reason for that. Some call them stamps and some call them coupons. I guess our records, some of our records show stamps and other records show coupons. They are stamps. Some of the merchants who handle and redeem them have special stamp days, on which they offer double or treble stamps. Our stores just have a special day, and offer double coupons on that special day. One of our stores offers treble, but only occasionally, probably one o'clock only—from the time the store opens until one o'clock.

In the sale of our stamps we make no special inducements to the merchants who are using them. We get cash
5179 for our stamps at the time we sell them. We use the voucher in only one place, and that is Louisville. All the rest are in books. The practice of attaching a voucher to a sales slip, and the customer going to the counter with the voucher to get the stamps is confined principally to the big department stores; the small stores do not practice it. Our largest volume is through the big stores, and they are our own stores, the Mercantile and Associated. Off hand I do not know what proportion of the total issue of stamps is disposed of and redeemed through the Mer-
5180 cantile and Associated stores. I should say 80%.

It is not a selling argument, in trying to induce a merchant to take up and use our stamp system, to show large
(3880) redemptions. I say that, because for a long time just our stores gave the stamps and we only had authorized redemption stations and sold at a discount for cash.

As to what I mean by "we just gave the stamps", I

will say, since we have changed to the 1350 coupon books we simply authorized all users of our coupons that they could redeem stamps. Prior to that time we had only authorized redemption stations and a good many of the merchants were just giving stamps and not redeeming them.

I cannot give the exact date when that change was
5181 made. I should say it was about three years ago. Prior to that time the method of doing business was no different than I have described here today, with the exception that we extended the privilege to all merchants instead of restricting it. Prior to three years ago the merchant could redeem any stamps that were pasted in the books that were presented to him for redemption. We appointed authorized redeeming stations. If we had a few groceries and dry goods stores that we thought were not good redemption stations, and we wanted to confine it to one redemption station, why we excluded them.

Any of the about 2200 dealers in our stamps will redeem books or half books. In the redemption of books or half books the grocers do not exclude articles like sugar,
5182 or things like that. Some of them exclude meats. They do not exclude it in sugar or other staple articles, to my knowledge.

Our stamps are shipped from the printer at Scranton, Pennsylvania, to our local offices, and as the stores need the stamps they are consigned to them. They issue a re-
(3881) ceipt to us for those stamps and they are kept in their vault, and as the stamps are issued to the different departments they give a receipt in turn, and we know accurately—at the end of each month our manager goes in each department stores and audits the number of pads on hand in the safe and we charge them for the actual number of pads that they have issued and used during
5183 the month; the balances run very low.

The Surety Coupon Company furnishes the books in which the stamps are pasted. Before my time, at the commencement of the business, books were given away with a certain number of stamps in them, to get people started to the store. Since I have been with the company they don't issue any free stamps. The free stamps they issue, if they issue ,any, they make it up themselves and pay for them just like they do any other issue and they go into the sales account.

Only one store gives free stamps for the purpose of inducing customers to start trading. Jones at Kansas City is the only one. The Fair might have given a small
5184 amount. That is all I think of.

Redirect Examination by Mr. Mayer.

The percentage that double stamps and treble stamps bear to the normal issuance of those stamps to the collectors is a very small percentage.

(3882) *Recross-Examination by Mr. Aldrich.*

The name of our Buffalo store is J. N. Adam & Company. We did have the William Henger Company there. The most of the stamps that I have referred to as issued and redeemed in Buffalo are the J. N. Adam & Company
5185 account.

In answering Mr. Mayer's question as to the percentage double stamps and treble stamps bore to the normal issuance of those stamps to the collector, I referred to the collector. I do not think that people who are saving stamps wait for these special sale days so as to get the advantage of such days, because they do not know when the day is going to occur. They try to take advantage of it, of course. The stores which indulge in these double and treble stamp days sales vary the day of the week on which they hold them; one wek it might be on Wednesday,
5186 and on Tuesday or Thursday the next week. The store advertises broadcast when at least they have decided on what day of the week they will have it, with the intention of having customers take advantage of that offer. I suppose customers do await those days for many purchases; I haven't any proof of it; naturally they would take advantage of the double stamp days.

(3883) November 1, 1922. 10:30 A. M.

5187 HENRY SCHOTT, resumed the stand for further cross-examination by Mr. Aldrich.

Since the last meeting I have not made any investigation or given any consideration to the question as to what
5188 is institutional advertising. I have known of cases of

advertising where the name of the article and the name of the manufacturer or dealer have been so long associated together that when one is mentioned, either the name or the article, the other is in the mind of the buying public. I would say Eastman's Kodak I think would be a case of that.

I would not say that with respect to Colgate and Cashmere Bouquet. I would associate Colgate with Colgat's soap. I might associate it with dental cream. In my case I would associate it more likely with the dental paste than I would with Cashmere Bouquet as I happen to use dental cream. I did not know that Cashmere Bouquet was only a Colgate soap.

Procter & Gamble would bring to my mind Ivory Soap. I do not recall any other instances, perhaps, to the same degree. I think that advertising men would know Pitcher's
5189 Castoria. Castoria brings to my mind the name "Pitcher" more than the name "Pitcher" does "Castoria". It was originally Pitcher's signed by Charles H. Fletcher. There was Pitcher & Fletcher associated. My earliest recollection of the association was Pitcher's Castoria, and then to protect it they added "Charles H. Fletcher" to it as a signature.

I would not say that my experience in distributing ad-
(3884) vertising expenses has been solely confined to the ascertainment of costs as between different products sold by the same manufacturers or dealers.

As to the request that I give a summary of my experience with reference to this particular question, I will say—take, for instance, a bank, if that bank were adver-
5190 tising the savings department, the advertising would naturally be allocated to the savings department expense there. If it were advertising the bond department, that should be charged to the bond department; or the trust department, to the trust department; or the will department, to the will department.

I have had that experience in Kansas City. It was the Commerce Trust Company of Kansas City, before I came to Montgomery, Ward & Company. There was another case, Southern Pine Association of New Orleans, headquarters there. Some one hundred and fifty lumber manufactures, all independent each of the other, excepting that their members had an association who had gone to-
5191 gether to increase their sales. In that case the adver-

tising was apportioned among the various members of the Association and in the apportionment—if, for instance, there were publications put out regarding the method of handling freight, which was advertising and charged to the advertising account, that was apportioned among these people, but before that it was apportioned to the freight and traffic department.

5192 In my advice to the court as to how the profits should be arrived at in such a case as the present, I would consider the cost of advertising, the amount of space used, the articles advertised and the results of that advertising as applied to those articles advertised.

(3885) In apportioning the results of the advertising during the infringing period, as contained in the seven books of advertising heretofore introduced or identified in the record, I would pay no attention to the prominence given to the word "Wrigley's".

5193 As to whether or not I know that such advertising is institutional in character, I will say counsel for the Larson Company asked me about institutional advertising the last time. Now, such counsel may have one idea of what constitutes institutional advertising; I may have another; another man may have his own impression of what it is. I gather that what counsel for the Larson Company has in mind is simply advertising the name without a product, which I think is the same as throwing your money in the lake.

I have stated what I thought institutional advertising was. I have stated that I thought it was a pure waste, and unless it is associated—your name is associated with the merchandise, I consider that advertising totally and practically worthless. It must have an article of merchandise attached to it.

5194 I can conceive that the expenditure of a large amount of money in advertising a name of a firm or dealer and the brand sold by that firm or dealer, gives value to the name when they are both together. If the product sold under

5195 the name or brand is a good product, and the course of dealing of the firm is such as to have satisfied customers, in all such cases I would charge the entire cost of such an advertisement, without reference to the prominence given the name, to selling cost.

5196 I did not say that I was unable to see anything in ad-
(3886) vertising except selling costs. I can see only in ad-

vertising an object in selling merchandise advertised. I do not want to create a selling cost without selling merchandise. That is a matter of business policy.

I have had experience with advertising where the object of the advertising was to make the name of the firm well known, as well as the name of the brand. I gave you two instances, in one of which we advertised the savings department of the Commerce Trust Company. We, of course, included the name of the Commerce Trust Company, which brought business to that bank, and improved the condition of that bank's value, and necessarily its assets. As to whether I mean by that, that good will can be created through such large advertising, I will say if you give customers service, treat your customers right, give them good merchandise and deliver it, but not through advertising alone, you never could, I would never agree to that. Advertising must be backed up with good merchandise, fair treatment, satisfied customers, or all your advertising is lost.

5197 I have no knowledge or information as to what good will it. I have never dealt with good will, and in the companies I have been with I think almost without exception they have not carried good will on their assets. Good will is a very intangible thing, and I think is usually carried in a statement to make a good showing.

I do not know anything about how the law values good
5198 will. I only know the business end of it. I do know something about good will. I know about the subject, but I would not carry good will in my statement if I was strong enough not to. I said I do not know the law. I
(3887) would not carry good will in my statement under any circumstances.

(Mr. Aldrich then put the following question:

Q. Well, now, let us assume a case, Mr. Schott, where the infringer, knowing that he was infringing, decided to spend during the infringing period a very large sum of money in advertising, and that thereby he created a valuable good will in his own name and in the name of the brand advertised, just as hypothetical case, and that at the end of the infringing period he retained both his own name and the name of the brand which had been built up by, we will say, millions of dollars of expenditure, and that a good will had been created and ascertained by the rules laid down by the courts for ascertaining good will,

and you were called in as a so-called expert to determine how these advertising expenses should be charged as between this infringer and the third party, not as a matter of internal accounting as between different departments or brands, and that under the decree of the court the person injured by this infringment had been given the gains
5199 as well as the profits; would you in such a case feel that it was incumbent upon you, if you were charged with the duties of an expert, to consider the value of this good will as between the infringer and the injured party?

Mr. Mayer objected, upon the ground that it was for the court to answer the question put, and not the witness; that the question called for a conclusion of law;
(3888) that the hypotheses were not based upon what the law is, or upon what the facts are in this case; that the question is based upon the assumption that the witness knows something about the rules of law applicable to good will, of which he says he knows nothing; and as not proper cross-examination.

The master overruled the objection.)

5200 The Witness: (Continuing). To answer that I would have to be an accountant and have legal knowledge, neither of which I am. In my work I have hired accountants and engaged lawyers where it was necessary. As relates to good will and advertising I do not think all the advertising done in the world will bring good will unless you deliver good merchandise promptly to the satisfaction of the customers. How you could determine what that is I don't know. It would seem to me to be an extremely intangible quantity. By advertising a commodity such as these gums or a proprietary article where they had built up a great business—St. Jacob's Oil was one case of it, Sapolio was the other, where they stopped advertising their business practically disappeared within a year. Now, if that was good will created by advertising, it was gone within a year and never came back. I would not count on getting good will alone from advertising. The most important thing is good merchandise, proper dealings and a good organization handling that to the consumer.

In answering that question I have some information as an accountant, by going over the accounts of men who handle our accounts. From the legal standpoint I have none.

(Mr. Aldrich then put the following question:

(3889) Q. In a case where under the decree of the court the injured party was entitled to the gains and profits, and assuming that evidence had been adduced which fixed the gain to the value of good will during the accounting period, would you then apply to the total value of good will as ascertained by people who did have information on this subject, who were accustomed to make such computations, to the injured party such proportion of that value of good will as the total Doublemint advertising bore to the total advertising expense?

Mr. Mayer objected on the ground that the question was not cross-examination; that it called for a conclusion, and that the question was unintelligible. The objection was overruled.)

5202 The Witness: (Continuing). I would not adopt that rule. I would charge the advertising costs of Doublemint against Doublemint. I would find what my profits were out of Doublemint gum, deducting the cost of advertising, and such other costs as would come against the handling, manufacture and sale of that gum, just as I would with Spearmint or any other commodity I was selling.

(Mr. Aldrich then put the question:

Q. What would you do with this total sum representing the value of good will which my question assumes has been ascertained and stands at the present time as a fixed figure in this record, how would you apportion that between the different parties under such circumstances?)

(3890) The Witness: (Continuing). I would apportion exactly the same way. By that I mean I would charge my advertising expense, selling expense, manufacturing, overhead against Wrigley's Doublemint and find out what my profits were and credit that particular product to that department of my merchandise.

5203 As to why I would credit the value of the good will to the Doublemint Department, if that was the infringing department, I will say I would have a portion of it based as I explained. I would not have that portion dependent upon the amount that had been expended in Doublemint advertising, as compared with the total advertising for all brands. I would make it as compared with my Doublemint advertising as against my Doublemint sales, Doublemint advertising, handling charges

and all operations. If I sold an article that was making me five per cent. of my profits, I would figure that it had earned five per cent. of my good will, granting you to have some way of getting that; if I sold an article that made fifty per cent. of my profit, that would deserve fifty per cent. of my good will.

5204 I would not apportion it on the basis of sales. I would apportion it on the basis of profits.

(Mr. Aldrich then put the following question:

Q. We will assume that the total advertising expense in the case supposed is approximately $6,600,000 during the infringing period and that Doublemint advertising expenses are, for the purposes of this question, approximately $2,900,000, and we will assume for the purposes of this question also that the increase in the (3891) value of good will for this period was $5,000,000, and you are charged with the duty as an expert, because you are here as an expert, of advising the master how that increases of $5,000,000 should be apportioned. Would you apportion it on the basis of Doublemint advertising expense as compared with the total advertising expense, and if not, why not?

Mr. Mayer objected to the question on the ground that it was not cross-examination, irrelevant, incompetent, and immaterial. The master overruled the objection.)

The Witness: (Continuing). I certainly would not apportion it on the basis of Doublemint advertising expense as compared with the total advertising expense. I 5205 would not apportion it on the profits of these various commodities or departments. The very reason that I would not apportion it on advertising expense is that, if the advertising expense did not make a large profit or made a loss on that particular article, then I would not only not have good will, but I think I would have created bad will.

If I assume, also, that the sales of Doublemint gum during the infringing period amounted to approximately $8,500,000 and that the cost of manufacturing the Doublemint so sold was approximately $3,250,000, thus leaving a gross profit without deduction for overhead, advertising, and so forth, exceeding $5,000,000, I still 5206 would answer the last question put to me by Mr. Aldrich in the same way. I would still answer the question as to the apportionment of the value of good will

as I have answered it, if I assume also that the Wrigley
(3892) Company at the end of the infringing period retained both the name "Wrigley's", which has been given such prominence, in this advertising, and also the name "Doublemint".

5206 I say that because I cannot see any good will attached to a product unless it is standing up on its own legs and is making a profit out of itself; if it is not, it is a bad will.

I do not know that Doublemint did not stand up on its own legs, and did not make a profit.

Assuming that Doublemint did make a profit, then the apportionment should be on the proportion as I said
5207 before, of its percentage of profits towards the whole. And I would deduct, notwithstanding the fact that they retained the name of "Wrigley's", and the name "Doublemint" upon which this large sum of advertising had been expended, the total cost of advertising given to Doublemint during the infringing period mentioned.

I cannot tell, in the method which I would pursue, as an expert, whether that would do justice to the person injured by the infringement. I am here as an advertising man, not as an expert accountant; and I have had in my mind the desire that justice should be done to the injured party.

I think I would have followed the same method which I have testified to here with reference to the allocation of all these charges, and the disposition of the good will created during the period, if I had been called in as an expert only as to the question of advice to the Wrigley Company as to how its books should be kept.

5208 It would make no difference in my mind that there is a third party interested here, and that the rights of
(3893) that third party are to be considered under the decree of the court.

Those are the only methods that I know of getting accurate returns.

If I assume that the third party is interested in the gains and that that term, for the purpose of the question, includes the increase in the value of the good will during the infringing period, I could not tell what I would do with that sum which in the question which has been addressed to me would be approximately $5,000,000.

I have no advice to offer on what allocating I would do with reference to this $5,000,000 included in the good will.

(3894) (The Master then announced that he would not allow
5209-5214 the Wrigley Company to put on more than two witnesses on the question of coupons. Counsel for the Wrigley Company objected to the ruling on the ground that the further evidence that the Wrigley Company desired to introduce on the subject of coupons was not cumulative; it had nothing to do with expert testimony; that it simply related to the experience of others engaged in the issuing of numerous analogous lines of coupons and stamps to show what their experience was over a long period of years in order to enable the court to ascertain by comparison what the expected redemption of coupons issued by the Wrigley Company may be that some of the proposed witnesses had experience with coupons issued in substantially the same manner as the Wrigley Company and the redemption value of which and purchase value of which were substantially the same as the Wrigley Company's; that none of the proposed additional witnesses were connected with any of the institutions whose experience had already been put in evidence; that the Wrigley Company had evidence of more than two concerns handling labels and coupons and stamps during the different periods different from those already covered by the testimony and with different results from that shown by the testimony and in diverse territory in the United States, and who in some instances had issued coupons similar to the Wrigley coupon; that in some instances the redemption value of the coupons was the same as that of the Wrig-
(3895) ley Company and that such coupons were issued un-
5211 der similar circumstances as those issued by the Wrigley Company and with similar amount of purchases; that none of said additional witnesses exceeding two in number lived either in Chicago or in the State of Illinois; that they were scattered throughout the United States; that the Wrigley Company has arranged to bring at least four or five to Chicago for the purpose of taking their testimony. The Master stated that he did not think it was necessary for the Wrigley Company to have a witness present in order for the Wrig-
5213 ley Company to make a technical offer of proof with

regard to the coupon question. Mr. Aldrich stated that he would object to such an offer of proof unless he was advised who the witnesses were who would be produced, and what the result of their testimony would be. The Master then overruled the objection of the Wrigley Company to his ruling limiting the number of witnesses to be heard on the question of coupons.) Mr. Lane then said he understood this ruling of the Master limiting the number of witnesses was sua sponte and not on
5214 motion of Larson Company's counsel, to which the Master said that the record would speak for itself. Mr. Lane said he recalled no motion made by the Larson Company to that effect. Mr. Aldrich then said he thought he made a motion to that effect in New York and asked the Master to bear him out in that statement, to which the Master replied, "I don't think so, Mr. Aldrich, but I won't say positively," and Mr. Lane said he had no recollection of such a motion being made while he was present and the master then said "I have no recollection of it. I am perfectly willing to take the re-
(3896) sponsibility." Mr. Mayer then said that no motion
5214 was made in New York by Larson's counsel or else where to limit the number of witnesses on the subject of the United Profit Sharing Corporation's coupons, and Mr. Aldrich then said he would look over his record and that he did not want to make a positive statement on the subject.

(3897) (A discussion then took place as to the filing of the
5216- Canadian accounts, counsel for the Wrigley Company
5220 insisting that the whole case should be closed at once. The Master stated that the question as to whether all the matters should be closed at once had, as he understood, been already passed upon by the Master and acquiesced in by both sides. Counsel for the Wrigley Company protested that such was not the state of the record. The Master said the record would speak for itself.)

(3898) November 7, 1922.

5221 2:30 o'clock, P. M.

5222 FREDERICK I. BECTON, called as a witness on behalf of Wm. Wrigley Jr. Company, being first duly sworn, testified on direct examination by Mr. Mayer:

5223 My name is Frederick I. Becton. I live at Chatham, New Jersey. I have lived there a little over four years. I am Secretary of the United Cigar Stores Company. I started to work for the United Cigar Stores Company in 1903 and since then have been connected with Whalen Enterprises, that is, with corporations controlled by Mr.
5224 George Whalen. The United Profit Sharing Corporation is one of those Whalen companies. From early in 1916 until February, 1919, I was president of the United Profit Sharing Corporation. I never occupied any other position with the United Profit Sharing Corporation than that of president. I have been secretary of the United Cigar Stores Company since early 1919. I originally started with the United Cigar Stores Company as a clerk in the auditing department. I went through every branch of the auditing department, was assistant auditor and acting auditor and secretary of the company, I was in the sales department, in the employment department, real estate department.

In a general way, my duties as president of the United Profit Sharing Corporation were the duties that usually
5225 go with the title of president. I had acting charge of the United Profit Sharing Corporation.

The United Cigar Stores Company is a retail dealer in cigars, cigarettes, tobacco and other merchandise.
(3899) That other merchandise includes razors, razor blades, chewing gum, candies, pipes. The United Cigar Stores Company has handled Wrigley's chewing gum during the last ten or fifteen years.

5226 I would say that in 1914 the United Cigar Stores Company had approximately eight hundred stores and that by 1918 they had approximately thirteen hundred stores. During that period Wrigley's gum was sold in practically every United Cigar Company's store. The United Cigar Stores Company has issued coupons dur-
5227 ing the last fifteen years or more in connection with

its business. The United's policy of doing business and their instructions to their clerks are to issue coupons to every customer with every purchase. Up until August, 1918, the United Cigar Stores Company issued what is commonly known as one coupon with each five cent purchase. From that date on they issued one cou-
5228 pon with each ten cent purchase. Coupons are a piece of paper printed on safety paper of different denominations. I mean by denominations a half coupon, a whole coupon and one certificate which is equal to five coupons. The value of them is approximately one and one-half to two cents in merchandise at retail value. Per certificate did I say? Per certificate. I have samples of the various denominations issued by the United Cigar Stores Company.

(All of the foregoing evidence of the witness with regard to the dealing of the United Cigar Stores Company in Wrigley gum and its issuance of coupons was objected to by Mr. Reed on behalf of the Larson Company at the time it was given, as being immaterial and irrelevant and res inter alios acta, but the objections were in
(3900) each instance overruled. Mr. Mayer then offered in evidence the coupons produced by the witnes. Said coupons issued by the United Cigar Stores Company of denominations of ½ coupon, 1 coupon, ½ certificate and 1 certificate, so offered, were received in evidence over the objection of Mr. Reed, and were marked Wrigley Exhibit 54; Becton Nos. 1, 2, 3 and 4.)

5229-5230 (Wrigley Exhibit 54; Becton Nos. 1, 2, 3 and 4.)

5231 Wrigley Exhibit 54, Becton No. 1, the ½ coupon, has one-half the value of the coupon marked 1 coupon, Wrigley Exhibit 54, Becton No. 2. Wrigley Exhibit 54, Becton No. 4, has five times the value of the No. 1 coupon, Exhibit 54, Becton No. 2. The coupon marked ½ certificate, being Wrigley Exhibit 54, Becton No. 3, has one-half the value of the certificate numbered "1", being Wrigley Exhibit 54, Becton No. 4.

5232 In speaking of values I refer to the redemption value. The No. 1 certificate, Wrigley Exhibit 54, Becton No. 4, has a redemption value in merchandise at retail of from one and one-half to two cents. Wrigley Exhibit 54, Bec-
5233 ton No. 3, has one-half of the value of the 1 certificate. The Wrigley Exhibit No. 54, Becton No. 2, has one-fifth the value of the 1 certificate. Wrigley Exhibit 54, Becton

No. 1, which has the ½ coupon, has one-tenth the value of the 1 certificate. These values that I have just given are the present values of those coupons, and the redeemable values have been approximately the same the last fifteen
5234 years. The wholesale value of the merchandise that a No. 1 certificate, that is Wrigley Exhibit 54, Becton No. 4, was redeemable for was approximately one cent. The same ratio will apply as to the other coupons that I have produced here. In states where the law gives the holder
(3901) the option to redeem coupons in merchandise or in cash those various coupons were redeemed or redeem-
5235 able in cash. Where the coupons were redeemable in cash the value of certificate No. 1, Wrigley Exhibit 54, Becton No. 4, was one cent, and the cash redeemable value of the remaining coupons produced here bore the same proportion of the cash value of the No. 1 certificate as the proportions I have already given.

I have said that these coupons were issued up to August, 1918, with each five cent purchase, that is, a No. 1 coupon, and that since August, 1918, the No. 1 coupon was issued with each ten cent purchase. Prior to August, 1918, if a person bought ten cents worth of merchandise from one of the United Cigar Stores he would get two coupons; so that prior to 1918 one coupon was given with each five cent purchase or multiple thereof. Since August, 1918, if a person bought twenty cents worth of merchandise from one of our stores, he would get two
5236 coupons. In other words, he would get a whole or a No. 1 coupon with each ten cent purchase or multiple thereof. The United Cigar Stores Company began to issue coupons of the type that I have described and in the manner that I have stated when they began business in 1901. They have been issuing coupons of the type described and as stated by me continuously since then and up to the present time.

The United Cigar Stores Company issued and still issues those coupons with everything they handle in their stores. My company has records of the number of these coupons issued by it and redeemed by it from 1907. I
5237 have a table prepared showing what the number issued and redeemed has been annually beginning with the year 1907.

(3902) (All of the foregoing evidence of the witness given after the introduction in evidence of the said United

Profit Sharing coupons was objected to by Mr. Reed at the time it was given, on behalf of the Larson Company on the same ground as he had objected to the previous testimony of the witness, but the objection in each case was overruled. The witness then produced the statement he said he had prepared. Mr. Mayer submitted it to Mr. Reed and then offered it in evidence as Wrigley Exhibit 55. Mr. Reed objected on the ground that it was irrelevant and immaterial and secondary evidence. Mr. Mayer examined the witness further before the Master ruled on the objection.)

5238 This statement that I have produced here of issues and redemptions of the United Cigar Stores Company was taken from the company's original records by clerks under my supervision. Those records were the records of the United Cigar Stores Company kept by it in the due course of business. They were records on which the United Cigar Stores Company relied as correct in the transaction of its business. They are still in existence and subject to inspection. That statement correctly shows the items purporting to be shown thereon.

(Mr. Mayer then offered the document in evidence and Mr. Reed renewed his objection. The Master asked Mr. Reed if he wanted to ask the witness any question about it. Mr. Reed then examined the witness. The witness, during this examination by Mr. Reed, testified:)

(3903) This document which is offered as Wrigley Exhibit
5239 55 includes the years 1907 up to 1921. I should say I was bookkeeper for that concern during ten years. Those years were 1907, 1908, 1909, 1910, 1911, 1915, 1919, 1920 and 1921, to the best of my recollection. When I was
5240 their bookkeeper I do not mean I made the entries. In the technical sense I would say I did not keep the books. I did not issue any of the coupons. I could not say how many of the coupons I saw issued. Coupons were issued every year from 1907 to 1921. I did not issue any myself. I saw the denominations of the coupons. Personally I made no record of them. I did not inspect every coupon
5241 that was handed out. The purported record taken from the books is a record of all the stores of the United Cigar Stores Company all over the country. I could not list the stores in which I saw those coupons handed out. I could
5242 not make a guess as to how many I saw handed out. Exhibit 55 are all United Cigar Stores certificates or cou-

pons. They are nobody else's coupons or certificates. They were issued by the United Cigar Stores Company, and redeemable by it.

(Mr. Mayer then resumed the examination.)

I will explain the method of keeping records of the coupons issued by the United Cigar Stores Company and of those that were redeemed. A record is kept of the quantity of each denomination of coupons shipped to each store, inventories are taken. Inventories are taken
5243 periodically of the quantity on hand and from these figures we arrive at the number issued—the quantity issued by individual stores. By adding up the quantity issued by all stores we arrive at the total issue. As to redemptions, these are redeemed in our various premium stations throughout the country and are sent by our pre-
(3904) mium stores to either New York, Chicago or San Francisco depots, and are there recounted and records made of the quantities returned by each premium station. By adding all of these returns together we arrive at the total redemption. I have during my connection with the United Cigar Stores Company had to do with the subject matter of the issuance and of the redemptions and with the general method by which it was done and the method in which the records were kept. All this work
5244 comes under the auditing department. I have personally examined these records of the United Cigar Stores Company from time to time and have had them audited under my supervision, but have not personally audited them. Those records have been kept, so far as I am aware.

(All of the foregoing evidence elicited by Mr. Mayer with respect to the record of the United Cigar Stores Company was objected to at the time it was given by Mr. Reed, but the objection was in each case overruled. On examination by the Master the witness then testified:)

My company does not print these coupons. They have that done by a printer. Somebody made up this paper,
5245 Wrigley Exhibit 55, under my direction. The people who prepared it were employed in the bookkeeping department. They were persons familiar with the business and they made up this statement for me. I remember what I asked them to do. I told this one person that I wanted a correct statement of the issue and redemption of all of the United Cigar Stores Company's coupons

and certificates as far back as our records would show.
5246 We had these figures right before us. All it was necessary for us to do was to copy them. I have every reason to believe that they were truly and correctly made.

(The Master then overruled Mr. Reed's objection to
(3905) the introduction of the document concerning which the witness had been interrogated, and the document was received in evidence and marked Wrigley Exhibit 55.)

5247 Said Wrigley Exhibit 55 is as follows:

UNITED CIGAR STORES CO.

CERTIFICATES

Year	Issued	Redeemed	Yearly %
1907	76,077,536	59,064,713	.7763
1908	77,311,218	65,879,853	.8521
1909	94,551,747	76,821,308	.8125
1910	118,800,713	93,689,997	.7875
1911	127,869,935	110,345,356	.8625
1912	139,513,072	113,049,870	.8100
1913	185,061,332	155,612,401	.8400
1914	185,152,961	171,551,005	.9250
1915	208,744,072	187,561,321	.9000
1916	271,681,202	215,094,019	.7900
1917	261,965,855	235,839,476	.9000
1918	262,806,601	199,116,613	.7576
1919	260,265,522	207,124,163	.7958
1920	405,130,826	281,062,675	.6937
1921	563,457,024	322,268,433	.8867
	3,038,389,616	2,494,081,203	

Accumulated Percentage of Redemption from 1907 to 1921 Inclusive—.8208

(3906) (Mr. Reed then interrogated the witness and the witness answered as follows:)

5248 Wrigley Exhibit 55 is a purported statement of the certificates and coupons issued by the United Cigar Stores Company for merchandise in connection with the sale of all merchandise and of the certificates redeemed. I was asked to prepare this by one of the officers of the United Profit Sharing Corporation. That officer was Mr. Oscar Davis, the president. I was told that the Wm. Wrigley Jr. Company wanted to see the figures. I did not know I was to appear as a witness in this case. I think I found it out last Friday. The document was prepared before then. I got it from the clerk that I told to
5249 make it up, but I told him to make it up before I knew I was to come to Chicago. I knew I was coming to Chi-

cago before I told him to give it to me. There had been statements like that made up before this one. I can't say where those statements are. A clerk prepared those other statements. It was not necessarily the same clerk. The clerk who prepared this statement did not make all of the entries in the book. The statement runs over a period of fifteen years. The same clerk would not do the same work for that length of time.

(Mr. Mayer resumed the examination.)

5250 Wrigley Exhibit 55 purports to show the number of certificates issued and redeemed by the United Cigar Stores Company. The certificates referred to therein are the certificate No. 1 similar to Wrigley Exhibit 54, Becton No. 4.

(3907) The United Profit Sharing Corporation is primarily a redemption agent for what is commonly known as manufacturers' coupons. In addition to this, however, they have coupons of their own which they sell and which they redeem. The United Profit Sharing Corporation was organized in 1914 by Mr. George J. Whalen. That

5251 was in connection with the United Cigar Stores Company. The stock of the United Profit Sharing Corporation was issued to the stockholders of the United Cigar Stores Company.

(Mr. Mayer then asked the witness to tell in a general way as to the way the United Profit Sharing Corporation issued its coupons and redeemed the same, and what its method of business was and is in that respect. This was objected to by Mr. Reed as immaterial, irrelevant and incompetent and on the ground that it had nothing to do with the case or the questions involved. The objection was overruled. Mr. Reed also objected to all the subsequent evidence of the witness along this line, but the objection was in each case overruled.)

The United Profit Sharing Corporation enters into contracts with manufacturers, such as the Wm. Wrigley Jr. Company and Swift & Company, to pack profit sharing coupons with their products, and the United Profit Sharing Corporation acts as redemption agent for such manufacturers. In addition to this they have their own profit sharing coupon which is sold to other firms or cor-

5252 porations an which they redeem on their own account.

While I was president the United Profit Sharing Corporation had about thirty customers. The type of coupon

the United Profit Sharing Corporation dealt in were similar in appearance and of the same value as Wrigley Exhibit No. 54, Becton Nos. 1, 2, 3 and 4; that is, the re-
(3908) deemable value was the same. The class of persons that ultimately receive these coupons and turn them in for redemption are known to me as collectors. Collectors
5253 receive United Profit Sharing coupons by purchasing products of the manufacturers that pack them. As to how much would have to be bought by a collector in order to get a coupon, I will say that varied with the manufacturer, but in most cases a coupon was given with a five cent retail purchase or a multiple thereof. By a coupon I mean a No. 1 coupon such as I have produced here and is marked Wrigley Exhibit 54, Becton No. 2. Some of
5254 these manufacturers, in addition to packing a coupon for the consumer of their merchandise, put in additional coupons to interest the merchant in selling their merchandise. Generally, it was five cents. There were some manufacturers that gave coupons of less value that did not issue a No. 1 coupon with a five cent sale, retail value. They, however, were in the minority. That is what I meant by my previous answer when I said I did not think
5255 it was always the same.

I have had occasion to examine the records of the United Profit Sharing Corporation from time to time of the coupons issued and redeemed by it. I have prepared a statement from those records showing the United Profit Sharing Corporation's issues and redemptions of its coupons from the time that it started up to the present time. That document was prepared in the same general way as Wrigley Exhibit 55. My knowledge of its correctness was the same as my knowledge with regard to the correctness of Wrigley Exhibit 55.

5256 (Mr. Mayer then offered the document in question to counsel for the Larson Company. Mr. Reed objected to the introduction of the document on the same ground as he had objected to the introduction in evidence of Wrigley Exhibit 55. On examination by Mr. Reed the witness testified:)

(3909) This prospective Exhibit 56 purports to show only United Profit Sharing Corporation coupons issued and redeemed, and of no other concern whatever. These coupons were sold coupons. I would not say that they

were sold on the same general system as the R & H. This statement does not show any Swift coupons. It
5257 just shows generally. These coupons were sold to people the United Profit Sharing Corporation had contracts with for furnishing them. It covers the entire number of coupons issued by the United Profit Sharing Corporation. The United Profit Sharing Corporation issued coupons and sold them to anybody that wanted to buy them, and these are the coupons they sold. They are their own coupons, and the people they sold them to issued
5258 them.

(Mr. Mayer then resumed the examination.)

We redeemed them. That statement does not include coupons that we did not sell but merely redeemed on a certain basis like the Wrigley coupons. The Wrigley coupons are not included in Wrigley Exhibit 56. This Exhibit 56 covers all of the coupons which the United Profit Sharing Corporation sold; that is to say, those that were paid for and were delivered to its customers, whereas other customers like Wrigley paid only for such of the United Profit Sharing coupons issued by those customers as were redeemed by the United Profit Sharing Corporation. The latter type of coupons are entirely excluded from Exhibit 56.

5259 (The Master then overruled the objection to the introduction of the document. It was received in evidence and marked Wrigley Exhibit 56.)

(3910) 5259 Said Wrigley Exhibit 56 is as follows:

"UNITED PROFIT-SHARING CORPORATION
ISSUE and REDEMPTION OF U. P. S. REGULAR COUPONS
YEARLY JULY 1914 to AUGUST 1922
PAID FOR AT TIME OF ISSUE

Wrigley Exhibit 56.

		Issued Total Units	Redeemed Total Units	Yearly %	Cum. %
July-Dec.	1914	105,542,536	2,146,572	.0204	.0204
	1915	433,607,785	147,055,885	.3391	.2767
	1916	266,561,762	237,927,344	.8925	.4804
	1917	119,932,771	169,476,282	1.4131	.6013
	1918	100,887,422	111,249,558	1.1027	.6506
	1919	126,008,574	111,446,692	.8844	.6761
	1920	138,833,389	128,710,610	.9271	.7031
	1921	117,143,322	119,765,373-3/4	1.0224	.7297
Jan.-Aug.	1922	64,428,961	76,427,974-1/4	1.1862	.7496
Total		1,472,946,522	1,104,206,291	.7496	.7496

These coupons were sold to various merchants throughout the United States."

5260 Referring to the caption of Wrigley Exhibit 56 which indicates the document has reference to the coupons paid
(3911) for at the time of issue, the words "Paid for at time of issue" mean they were paid for by the United Profit Sharing Corporation's customers to the United Profit Sharing Corporation at the time the latter company delivered them to its customers. Exhibit 56 refers to coupons issued and redeemed. Those coupons are of the same character and the same redeemable value as the No. 1 coupon already in evidence as Wrigley Exhibit 54, Becton No. 2. Referring to Wrigley Exhibit 56 and to the column marked "Yearly %," that indicates that the per cent of redemptions to issues from July to December,
5261 1914, is .0204. It means that practically one-fiftieth of the issue up to that time had been redeemed. It means that .0204% was redeemed, and in the same way was the next year's percentage of redemption, covering the year 1915, .3391%. Taking the year 1917, the yearly per cent is stated to be "1.4131." As to whether, as a matter of fact, that is intended to be 141.31, I will say that's a matter of personal opinion where the decimal point should be. I meant by that that in 1917 there were one and four thousand one hundred and thirty-one ten thousandths (1-4,131/10,000ths) as much as the issues for that year. Referring to the last column on Wrigley Exhibit 56 marked "Cum. %," the "Cum." stands for accumulated. Taking the year 1917 as illustrative, the accumu-
5262 lated or cumulative per cent of redemptions to issues was .6013 per cent, by which I mean that the total number of coupons redeemed up to and including the year 1917 from the commencement was 60.13% of the total number of coupons issued by the United Profit Sharing Corporation from the beginning up to and including the year 1917. The per cent of all the coupons redeemed by the United Profit Sharing Corporation from the commencement to August, 1922, of all issued during the same period was 74.96%. There were and are records of the United
(3912) Profit Sharing Corporation so kept as to show what the United Profit Sharing coupons issued by Wm. Wrigley Jr. Company came to the United Profit Sharing Corporation through the mails for redemption and also what the total number of United Profit Sharing Corporation coupons issued by Wm. Wrigley Jr. Company were redeemed by the United Profit Sharing Corporation. Those

records were the same as to those to which I have already
5263 referred as being under my supervision while I was president of the United Profit Sharing Corporation.

5264 November 15, 1922. 10:30 A. M.

I have a memorandum showing the percentage of the redemption of Wm. Wrigley Jr. Company's coupons through the mails as compared with the total redemption of the Wm. Wrigley Jr. Company's coupons. The period of time covered by my memorandum are the years 1916, 1917 and 1918. We have no records covering the percentages for the years 1914 and 1915. The mail order department was very small and operated—what few redemptions did come in by mail were handled through a
5265 premium redemption station, and there are no records showing how many came in by mail.

(Mr. Mayer then asked the witness: What was the per cent of the Wm. Wrigley Jr. Company's coupons that were redeemed by the United Profit Sharing Corporation through the mail in 1916 as compared to the total number of the Wm. Wrigley Jr. Company's coupons redeemed by the United Profit Sharing Corporation in that year? Mr. Aldrich objected on the ground that the witness had not the proper qualifications to make the answer and on the ground that it was immaterial and irrelevant and was not
(3913) the best evidence. The objection was overruled. The
5266 witness answered 17.59%. Mr. Mayer then asked the witness a similar question with respect to the year 1917. Mr. Aldrich renewed his objection on the ground that the witness was purporting to be answering the questions from a memorandum which he had before him which had not been shown to counsel. In answer to a question from the Master the witness said he was relying on some paper that he had before him. The Master sustained the ob-
5267 jection and also struck out the testimony regarding the year 1916 which the witness had just given. Mr. Mayer
5268- then examined the witness at length as to the manner
5278 in which the records of the United Profit Sharing Corporation were kept and then offered in evidence the memorandum which the witness had described and which showed these percentages of mail order redemptions and total redemptions. Mr. Aldrich objected. A discussion then took place, at the conclusion of which Mr. Aldrich ex-

amined the witness. On examination by Mr. Aldrich the witness testified:)

5279 This paper has nothing to do with the total issue. It deals only with the redemptions, and the mail order redemptions were one portion of the total and through the stores the other portion. It was not intended to put this paper forward as a paper showing the total issues. Its purpose is to show in effect that of the actual redemptions a certain percentage of such redemptions are affected through the mail and a certain percentage through the premium stores. It has not anything to do with the issues.

Mr. Aldrich then stated that his objection to the introduction of the document was withdrawn, and that the (3914) paper might go in for what it is worth, with the qualifications that the witness had made, but that he, Mr. Aldrich, would still insist that the document was immaterial and irrelevant; in other words, Mr. Aldrich stated that he did not waive the same objection that he had theretofore made to that class of testimony. The Master overruled that objection. Said document was then again offered in evidence. It was received in evidence and marked Wrigley Exhibit 57.)

Said Wrigley Exhibit 57 is as follows:

Wrigley Exhibit 57.

5281 "UNITED PROFIT-SHARING CORPORATION

REDEMPTION OF WM. WRIGLEY JR. CO. COUPONS THROUGH MAIL ORDER DEPT. COMPARED WITH TOTAL REDEMPTIONS OF WM. WRIGLEY JR. CO. COUPONS YEARLY 1916 TO 1918 INC.

	1916	%	1917	%	1918	%
Mail Ord.	30,043,472	.1759	88,251,470	.4129	94,438,006	.4626
Elsewhere	140,720,276	.8241	125,472,648	.5871	109,724,397	.5374
Total	170,763,748		213,724,118		204,162,403"	

(3915) I have information as to the percentage which all
5282 the United Profit Sharing Corporation coupons redeemed by it through the mail compares with all of its
5283 coupons that were redeemed by it in any manner. As to what per cent of all the United Profit Sharing coupons redeemed by it in 1916, 1917 and 1918 were redeemed through the mail, I will say the per cent is approximately ten per cent less on the whole than it is on Wrigley's taken separately. In my opinion, the reason for that is,
5284 Wrigley's coupons are distributed generally throughout the United States, more so than other United Profit Shar-

ing coupons. The facilities for redeeming his coupons in premium stations are not as great as it is of other manufacturers, therefore this increases the Wrigley mail redemptions. Another important factor is that the Wrigley Company has advertised in newspapers and billboards through the entire country that the wrappers around Wrigley's gum are redeemable for premiums. Therefore the collectors in these out of way places where there are no redemption stations save their coupons and send them in for redemption.

5285 I have already testified the United Profit Sharing Corporation had about thirty firms, corporations or individ-
(3916) uals handling its coupons. The Wm. Wrigley Jr. Company was one of them. Other manufacturers who use the coupons of the United Profit Sharing Corporation very seldom advertise that United Profit Sharing coupons are furnished with their product.

In 1914 the United Profit Sharing Corporation or the United Cigar Stores Company had 180 redemption stations, and they increased gradually from year to year until 1918 they had 244. The bulk of the premium stations where United Profit Sharing Corporation coupons could be redeemed were in the eastern part of the United States. A premium station is a store where they carry

5286 a stock of premium merchandise which merchandise is exchangeable for coupons issued by the United Profit Sharing Corporation and also for coupons issued by various manufacturers with whom the United Profit Sharing Corporation has a contract, and for coupons issued by the United Cigar Stores Company. In a great many instances these premium stations or stores are in the same store as a United Cigar Store. The premium station did not sell any merchandise except to exchange merchandise for coupons, so that a person could not go in and buy for cash any of these articles of merchandise that were exchangeable for coupons. The collector, in

5287 order to get merchandise for his coupons, must either go to a premium store or send them in by mail for redemption. If the collector wants to redeem through the mail, he must send his coupons to 44 West Eighteenth Street, New York. There was only one place where he could get his merchandise in exchange for his coupons if he wanted to use the mails. If he wanted to use the premium stores, he had a choice of from 180 to 244 stores,

varying during the period from 1914 to 1918. During 1914, 1915, 1916, 1917 and 1918, there was a large part of the United States where there were no premium stores
(3917) at all. There were several states in which there were no premium stores.

5288 I have examined Larson Exhibit 26, which purports to be one of the Wrigley Company's United Profit Sharing Coupons No. 1. That is merely a wrapper or label that is around five sticks of gum and the back part of that wrapper or label is the United Profit Sharing Coupon. I observe that the label on its face says that "This wrapper is a United Profit Sharing Coupon as stated on back. Save this complete wrapper. Remove carefully. Pull back here." The Wrigley coupons to which I have been referring in my testimony are the same kind as Larson Exhibit 26. The coupon to which my attention has just been drawn says that it has a cash value of one-fifth of a cent. I am aware also that the Wm. Wrigley Jr. Company, while issuing coupons of the type shown as Larson Exhibit 26, were also issuing coupons known as No. 5
5289 and No. 25. The No. 5s that I was familiar with were similar to that which is marked Larson Exhibit 28. The Wrigley 25s with which I was acquainted were similar to Larson Exhibit 29. I am familiar with a coupon which the Wrigley Company has packed with its Juicy Fruit Long Bar and which is shown as Larson Exhibit 27. I am aware that the Wrigley coupons of the different denominations thus shown in the record were being issued by the Wm. Wrigley Jr. Company during the period of time from 1914 to 1918, both inclusive. That is the type of Wrigley coupons to which I have been referring in my testimony when I was giving percentages of redemptions, and so forth.

5290 In order that a collector of the Wrigley coupons should be able to get merchandise for them, it was not necessary for him to turn in Wrigley coupons exclusively. He could turn them in either with the United Cigar Stores Company's coupons or with any of the thirty firms or corporations which issued United Profit Sharing Corpo-
(3918) ration Coupons. They were interchangeable with the United Cigar Stores Company and other manufacturers packing the profit sharing coupons and were of the same value—were the same value. When I say that they were of the same value I mean that a Wm. Wrigley Jr. Com-

pany Coupon No. 1, being Larson Exhibit 26, had identically the same exchangeable or redeemable value as did the United Profit Sharing Corporation's Coupon No. 1 and the United Cigar Stores Company's coupon No. 1. All of the coupons referred to in the preceding sentence
5291 were interchangeable, so that the premium stores would treat them all alike. The United Profit Sharing Corporation in receiving coupons of those different types by mail would treat them all alike.

Referring to the redeemable value of all of the various coupons that I have been referring to, that is to say, all of the Wrigley coupons, all of the other United Profit Sharing Corporation coupons issued by it to its other customers, about thirty in number, and including also the United Cigar Stores Company's coupons, there was from time to time a definite set of articles or merchandise which the collector of those various coupons could get in exchange for these coupons. The number of coupons which the collector had to surrender in order to get a given article varied from time to time during the period from July, 1914 to December, 1918. Speaking generally, the number of coupons required for a given article increased
5292 during the period 1914 to 1918, inclusive. That was because the cost of merchandise was constantly advancing. Whenever in my testimony I have used any language to the effect that the redeemable value of a No. 1 coupon or of a certificate has always been the same, I meant nothing more than it was always exchangeable for the same number of cents or fractions of cents either in cash or mer-
(3919) chandise, based on the retail value at the time of redemption.

I cannot recall as to what merchandise a hundred No. 1 Wrigley coupons could procure for the collector in 1914, but I think the catalog will show that in 1914 we required 1250 coupons for a Gillette razor and we were forced to increase the number of coupons required for that article
5293 on account of the increased cost until we required 1875 coupons. That was for the same Gillette razor. I am speaking from memory now. In other words, the redeemable value of coupons was constant so far as the cents in merchandise or cash was concerned, but it took more of them to get the same article as the prices of the articles increased.

I have here samples of United Profit Sharing Corpora-

tion Coupons that it dealt in with others than the Wm. Wrigley Jr. Company.

(Mr. Mayer offered in evidence the coupons just referred to by the witness. Mr. Aldrich objected. The
5294 objection was overruled. Said coupons of United Profit Sharing Corporation, one of denomination of one coupon and value of one-fifth cent, and the other of denomination of five coupons and value of one cent, so offered, were received in evidence and marked respectively Wrigley Exhibits 58-A and 58-B.)

5295 (Wrigley Exhibit 58-A and 58-B.)

5296 The United Profit Sharing Corporation has kept books and records showing how many of its coupons that it redeemed were used for articles requiring say, from one to one hundred coupons, and how many of its coupons were used to redeem articles requiring from one hundred and one to five hundred coupons, and how many of its coupons were redeemed for articles requiring different numbers
(3920) of coupons. The United Profit Sharing Corporation has always kept such records since they have been in business, but they have only kept them for a certain period of time; that is to say, they destroy them after a certain period. Records of that kind are still in existence
5297 for 1920, 1921 and 1922. I have caused a compilation to be made from those books and records showing the percentage of premium articles that were issued by coupon value.

(Mr. Mayer then offered in evidence the said compilation. Mr. Aldrich objected on the ground that it was incompetent, immaterial and irrelevant. The objection was
5299 overruled, and the document so offered was received in evidence and marked Wrigley Exhibit 59.)

Said Wrigley Exhibit 59 is as follows:

Wrigley Exhibit 59.

"UNITED PROFIT SHARING CORPORATION

PERCENTAGE OF PREMIUM ARTICLES ISSUED--BY COUPON VALUE

	1920 %	1921 %	1922 Jan. to Aug. %
1 to 100 Coupons	.0948	.0697	.0949
101 to 500 "	.3274	.2893	.3167
501 to 1000 "	.2655	.2757	.2456
1001 to 2000 "	.1823	.2072	.2194
2001 to 4000 "	.0804	.0951	.0929
4001 Up "	.0496	.0630	.0305
	10000	10000	10000"

(3921) The United Cigar Stores Company had records show-
5300 ing the percentage of premium articles issued by coupon value of the same general types as those I have described were kept by the United Profit Sharing Corporation. They cover the same period, 1920, 1921 and 1922.

(The witness then produced a document with reference to United Cigar Stores Company similar to Wrigley Exhibit 59, and Mr. Mayer offered it in evidence as Wrigley Exhibit 60. Mr. Aldrich objected on the ground of irrelevancy, incompetency and immateriality. The objection was overruled and the document so offered was received
5301 in evidence and marked Wrigley Exhibit 60.)

(3922) Said Wrigley Exhibit 60 is as follows:

5301

"UNITED CIGAR STORES CO.

PERCENTAGE OF PREMIUM ARTICLES ISSUED—BY COUPON VALUE

	1920 %	1921 %	1922 Jan. to Aug. %
1 to 100 Coupons,	.0307	.0290	.0308
101 to 500 "	.3013	.3222	.3676
501 to 1000 "	.2194	.2395	.2387
1001 to 2000 "	.2847	.2420	.2382
2001 to 4000 "	.1145	.1115	.0878
4001 up "	.0494	.0558	.0369
	10000	10000	10000"

5302 Wrigley Exhibit 59 and Wrigley Exhibit 60 both refer to coupon values in the caption. By coupon we mean one
(3923) coupon packed, or one wrapper, rather, around each package of Wrigley's gum, or its equivalent. Referring to Wrigley Exhibit 59, the first percentage that I gave is from 1 to 100 coupons. Under 1920 I say, ".0948." By that I mean that nine and forty-eight one hundredths per cent of the coupons of the United Profit Sharing Corporation coupons that were redeemed by it in 1920 were redeemed in articles that required from 1 to 100 coupons each. In the same way, referring to the item on the same exhibit under the column headed "1921", in referring to
5303 1001 to 2000 coupons, I say the percentage is ".2072." I mean by that that twenty and seventy-two one hundredths per cent of all the United Profit Sharing Corporation coupons redeemed by it in 1921 were redeemed by articles which required from 1001 to 2000 coupons each. Referring to Wrigley Exhibit 60, the percentages there

indicated were written for the same purpose and in the same general manner as I have just explained as to Wrigley Exhibit 59. By way of illustration, Wrigley Exhibit 60 means that eleven and forty-five one hundredths per cent of all the United Cigar Stores Company's coupons redeemed in 1920 were redeemed by articles each of which required from 2001 to 4000 coupons.

(3924) Wednesday, November 15, 1922.

5305 2:00 o'clock P. M.

FREDERICK I. BECTON, resumed the stand for further direct examination by Mr. Mayer:

I gave some testimony at the last hearing with respect to instructions given to the clerks of the United Cigar Stores Company to issue coupons to every customer with every purchase. Those instructions were in force from the time the company started in business. There was a time when there was a time limit on the coupons issued by the United Cigar Stores Company within which the coupons were required to be redeemed. I will state when
5306 and what was that time limit. For a number of years we printed an expiration date or caused to be printed an expiration date on our certificates, but we discontinued having that printed on them in 1909. Even though our certificates had an expiration date printed on them, we still honored them for redemption. I am under the impression that we never had an expiration on the coupons. I am not positive about that, but I do not believe we did. I would say about five years was given within which to redeem those certificates that were issued with the redemption dates on them. My recollection is that it was September 30, 1909, we discontinued putting a redemption date on the certificates. By "redemption date" I mean the time within which the certificates had to be sent in for redemption.

5307 The Wm. Wrigley Jr. Company's gum was sold at the
(3925) stores of the United Cigar Stores Company during all the years 1914, 1915, 1916, 1917 and 1918. I cannot give any idea at all as to the quantity of coupons which I saw issued. When Mr. Reed asked me whether I saw any of the coupons issued I had in mind the coupons issued by

the retail stores, the United Stores Company, to its customers, the collectors.

I have had occasion as an officer of the United Cigar Stores Company and as an officer of the United Profit
5308 Sharing Corporation to observe how long these various coupons I referred to continued to come in for redemp-
5309 tion after they had been issued. We are receiving now from time to time coupons that were issued by the United Cigar Stores Company when they first began business, that is, the first year or two of their business. That business goes back to 1901. We are also receiving for redemption coupons issued by the United Profit Sharing Corporation the first year or two they were in business. That goes back to 1914.

In my answers regarding the time limit that was put on certificates up to 1909, I did not include the certificates that were sold directly by the United Profit Sharing Corporation to its customers. I was referring to the certifi-
5310 cates issued by the United Cigar Stores Company. No certificate or coupon ever issued by the United Profit Sharing Corporation had a time limit within which they had to be redeemed. I know how the Wm. Wrigley Jr. Company put out its United Profit Sharing Corporation coupons.

The wrapper around each package of chewing gum retailing at 5 cents is one coupon; in addition to that they pack a No. 5 coupon in each box or carton of 20 packages;
(3926) and in addition to that they offer,—I understand they offer from time to time quantities of coupons as inducements to jobber salesmen.

I am familiar with the brands with which the Wm. Wrigley Jr. Company packed their coupons. Their brands are Wrigley's Doublemint, Wrigley's Spearmint,
5311 Wrigley's Juicy Fruit and Wrigley's P.K.s.

I know the Wrigley Company first began to use coupons about July, 1914.

5311- (Mr. Mayer then asked the witness to state from his
5316 knowledge the way in which the Wrigley Company used United Profit Sharing Corporation coupons and issued them so that they got into the hands of the gum chewer, and from his knowledge of the coupon business of the United Cigar Stores Company and of the United Profit Sharing Corporation, and his familiarity with their methods of issuing and redeeming them, and from his fa-

miliarity of the percentages of the redemptions of those companies, to state in his opinion what would be the per cent. of redemption of the United Profit Sharing Coupons issued by the Wm. Wrigley Jr. Company from the beginning thereof, in July, 1914, to November, 1918.

Mr. Aldrich objected on the ground of immateriality, irrelevancy and incompetency. The objection was overruled.)

5316 In my opinion between 60 and 70% of all the coupons issued by the Wrigley Company from July, 1914, to No-
(3927) vember, 1918, will have to be ultimately redeemed.

5317 I have before me samples of the United Profit Sharing Corporation's catalog. Here is one issued in 1917. It is a list of articles for which they gave coupons and also photographs of these articles and the number of coupons required for each article.

(Mr. Mayer then offered in evidence the said premium catalog. Mr. Aldrich objected on the same ground that he had theretofore made to all such line of testimony. The objection was overruled.

The said premium catalog issued by the United Profit Sharing Corporation bearing notation "Season 1917-1918," was offered, was received in evidence, and marked Wrigley's Exhibit 61.)

(3928) Here is another catalog issued by the United Profit
5318 Sharing Corporation. I think it was issued in 1914. It bears the expiration date of September 1, 1916.

(Mr. Mayer offered the said premium catalog in evidence. Mr. Aldrich made the same objection that he had made to the other catalog. The objection was overruled, the catalog was offered and received in evidence, and marked Wrigley's Exhibit 62.)

(3929) *Cross-Examination by Mr. Aldrich.*

5319 The United Profit Sharing Corporation may have been organized to take over the premium business of the United Cigar Stores, but it never did. The United Profit Sharing Corporation was organized with a named capital, I think of $350,000. I do not think all that was paid in originally. Its paid in capital exceeds that now. I think
5320 in 1915 its capital was increased by a vote of the stockholders. I think it was increased to $2,000,000 at that time. Since then it had been reduced. The outstanding

now I believe is $409,000. It was reduced by a vote of the stockholders. The United Cigar Stores Company never issued the coupons of the Profit Sharing Corporation. It adhered to its coupons and certificates.

The stock of the Profit Sharing Corporation is not largely owned by the United Cigar Stores Company or people connected with it. I would not say it had the same board of directors with one or two exceptions as the United Cigar Stores Company. I think the United Cigar Stores has 18 directors. The officers of the two
5321 companies are not substantially idential. The United Profit Sharing Corporation have five directors. They are Mr. O. H. Davis, Mr. Werner, Mr. W. T. Posey, and I am not sure today who the other two are. S. S. Whelan and J. F. Whelan were directors at one time. I am not sure whether they are today or not. Mr. W. T. Posey is also directors of the United Cigar Stores Company. Mr. Davis is not a director in the Cigar Stores, and has no connection with them. Mr. Werner is not a director of the Cigar Stores Company.

(3930) Three of the five directors of the Profit Sharing
5322 Corporation are not directors of the Cigar Stores Company. As to whether that has been so until recently, I will say no. Mr. John F. Whelan and W. T. Posey are directors of both companies.

In making up my schedule on various subjects I have used the coupon as the unit in most cases. There is one statement that I recall in evidence here that is made up on a unit of one certificate which is equivalent to five coupons. The schedule where I used the certificate as the unit is the issue and redemption of the United Cigar Stores Company by years from 1907 to 1921. The same
5323 unit is used in the issue and in the redemption. I have made no switch between the two.

In all figures prepared in the offices of the United Cigar Stores Company and the United Profit Sharing Corporation the percentages are generally expressed in terms of ten thousandths. I mean by that it is so shown on their books.

I will explain the change from our books to our state-
5324 ment that I produced here. I said that those figures—if I did not say it, I will say it now, that our original records show the same as the books there and the fact that we carry four points in all percentages made up,

we always place the decimal point in front of the original figure. If you wanted to read "9450," the way counsel for the Larson Company speaks, we would understand it as $94.50 and not 94½%. It is just the way our people understand the figures and we make them up that way. We do not use the percentage sign, not after the figures, sometimes at the top of the column, but not after the
(3931) figures. It is not shown on Wrigley Exhibit 55.

Wrigley Exhibit 55 is the Exhibit in which I say the unit used is the certificate. One certificate equals five coupons. The certificates have the same valuations both
5325 in the use by the United Cigar Stores Company and also by the Wrigley Company. The coupon with each company has the same value. That is likewise true with each of the other subscribers or users of the service of the Profit Sharing Corporation. My recollection is that in the tables other than Wrigley Exhibit 55 which I have prepared here, I have used the coupon as a unit, but if the certificate unit is used in any other Exhibit or in my testimony, it is so stated. In each case and as to each Exhibit I have used the same unit in both columns.

I was not attempting to draw a distinction between the fluctuating value of these coupons and the fluctuating value of merchandise. I was endeavoring to state the facts as I saw them and understood them. It is a fact that these coupons were redeemable in cash at the same rate during the entire period.

5326 As to whether I distinguished these coupons from the German mark in the fact that these coupons have not changed in value, and that it is the merchandise that has changed in value, I will say that I do not think that is an applicable parallel. I say that because the Wrigley coupons have printed on their face the cash value which is redeemable in the currency of the United States at the value printed on the face thereof. I have not had any dealings in German marks, but from the papers I judge that the value printed on the face thereof does not mean much. It was not the change in value of the cou-
(3932) pons or certificates, but in the merchandise, that brought about the distinctions which I noted on my direct examination with respect to the increased number of
5327 coupons necessary to secure any given article.

It is true that the purchasing power of the coupon, expressed in terms of merchandise, had greatly depre-

ciated. As to what importance I attach to the increased cost of the merchandise or the decreased purchasing power of the coupons or certificates, in view of the fact that their redemption value in currency of the United States was always the same, I will say I attach this importance, that a dollar in currency of the United States would not buy as much merchandise during the year 1918 as it would in 1914. That means that the redemptive value of the coupon, while in terms of a cent or fraction of a cent was the same, yet, if converted into money it did not buy as much as it did before. It did not buy as much merchandise when not converted into money.

5328 The United States currency in 1918 was just as good as before if put away as a matter of saving. I do not think it would have brought as high a rate of interest in 1914, as it would in 1918.

At the time the United Profit Sharing Corporation commenced business, and in the first year thereafter, it had several hundred manufacturing concerns or stores using its coupons. That is, the total number of users of our service at that time was several hundred.

5329 The first year that the Profit Sharing Corporation was in business they did business both with retailers and with manufacturers, and I could not be definite as to the (3933) number of retail accounts they had. At that time we did have some small retail accounts.

By reference to Wrigley Exhibit 62, which is one of the catalogs of the United Profit Sharing Corporation, I would say at that time we had about 40 large users. There are 43 large users listed in Wrigley Exhibit 62. That does not include the retail dealers.

5330 George W. Whelan was the organizer of the United Profit Sharing Corporation. I do not think Mr. Wrigley participated in the organization of that corporation. I don't know whether he ever had any stock in it. That stock was handled on the New York curb soon after it was organized. I think it reached somewhere about $8.00 a share. At that time the par value was $1.00. At one time par was 25 cents, and it is now a dollar. Par was originally $1.00, I think. That market is now $5.00 or $6.00.

5331 The catalog which Mr. Aldrich now hands me is the current premium catalog of the United Cigar Stores. It

was issued about August of this year. The United
5332 Profit Sharing Corporation has approximately 30 customers now. The United Profit Sharing Corporation issued a catalog this year. I have not one with me.
5333 In the current catalog of the United Cigar Stores Company only 11 of our customers using our service are named. The other customers are small users and with a local distribution. This current catalog is national in its scope.

I will state why, in my judgment, some people who have commenced to use this service discontinued its use. The coupon, in my opinion, is not a good thing for every
(3934) kind of merchandise. I do not believe that it has any pulling power or that it is worth the money that it costs when packed, for instance, with flour. I do not believe it has any pulling power or is worth anything when packed with shoestrings, with hooks and eyes.

I could perhaps name other articles in which the coupon would not aid sales. If there is little or no redemption, customers of the service make up their minds that it is not an aid to sales. We do want any customers un-
5335 less the service is beneficial to them. In some cases we have printed or caused to be printed the coupons for our customers, but not in every instance.

Part of the Wrigley coupons we printed or caused to be printed. We do not print the Wrigley outer wrapper around the 5 cent package. Wrigley gets the "5" coupon that is pasced in each box of 20 packages, from us. He only pays for that when it is redeemed. That is also true with the "25" coupon. Wrigley does not print them himself or cause them to be printed. Likewise it is true that he only pays for them when they are redeemed, except for the cost of the paper and printing. Wrigley pays the Profit Sharing Corporation, or did when I was president of it, and I assume he stills does; when these 5 and 25 coupons are delivered to him he is billed with the printer's cost. In other words, the printer's bill for creating them is sent to Wrigley at the time the coupons are shipped.

I cannot say what other expenses the Wrigley Company has in connection with this Coupon business. That is the only expense the Wm. Wrigley Jr. Company is billed with that I recall just now.
(3935) There is a report to us as to the number of the small

5337 coupons around each package of five sticks of gum that has been printed by the Wm. Wrigley Jr. Company or issued. During the time that I was president of the company we got a letter from them monthly advising us of how many they had issued. I have not a copy of one of those letters with me. It has been so long since I have seen one of those letters that I have not any idea of the wording of it, but I would assume that the letter simply
5338 stated that during the previous month so many coupons were issued. In keeping our books I would say it would be very advisable to receive information of the issues made by the Wrigley Company from month to month. That told us the denominations of the several coupons or certificates issued.

As to whether I would say as a bookkeeper or accountant that we could not keep books unless we had that information, I will say we do not keep such information on the United Cigar Stores' books. I am under the
5339 impression that our books show the denominations of the issue of Wrigley's coupons. Our books show the
5340 total issues in each year made by the Wrigley Company of these several denominations separately. We derived that information to put on our books from the Wm. Wrigley Company.

The report from the Wrigley Company is as to the issue of coupons. In the list of gums with which I stated the Wrigley Company used our coupons, I did not include Wrigley's Lic-o-rice chewing gum or Wrigley's Sweet Sixteen or Wrigley's Pep-o-mint Chewing Gum, as they were not issuing coupons with those brands during the time that I was actively connected with the United Profit Sharing Corporation, I and I was not familiar with the
(3936) fact that they are doing it today. We did not put in
5341 any safeguards for the purpose of checking these alleged reports made from time to time by the Wrigley Company of its issue of coupons and the actual issue. We assumed that the figures we get from a reputable concern like the Wm. Wrigley Jr. Company were after it.

Whenever we received notice from the Wrigley Company that it at sometime in the past issued so many more of these coupons we added that on our books to our contingent liability. We had other customers with whom we did business in the same manner as we did with the Wrigley Company.

We do business with Swift & Company in the same
5342 manner. I do not mean by that that Swift & Company printed their own coupons of certain denominations. We had all the Swift & Company coupons printed. In fact, I do not recall now any other user of United Profit Sharing Coupons that printed their coupons with the exception of Wm. Wrigley Jr. Company. Eliminating the Wm. Wrigley Jr. Company, some of our customers we charged for the coupons at the time of redemption, and others we charged at the time of delivery. We did not in each case charge the printing expenses of the coupons
5343 to the customers using them. I will explain that.

In instances where we sold coupons on what we called a delivery basis, that is, where the customer pays the redemption price at the time of delivery, we do not make any charge for printing and paper. Such an account as that is in the contingent liability account. We had com-
(3937) panies which paid for all the coupons received on the basis of an entire or total redemption. That was not at the same rate as the actual redemptions in the case of the Wrigley Company. The rate was cheaper. The price to the customer who paid at the time of delivery was $2.00
5344 per thousand, and the price where payment is made to the Profit Sharing Corporation at the time of redemption is at least $3.00 per thousand. There are some customers to whom we charge a higher rate than $2.00. There are a few customers with small capital and limited business that we charge $2.50 a thousand to at time of
5345 delivery. I do not think there were any that we charged as high as $3.00 a thousand at the time of delivery.

If the United Profit Sharing Corporation gave away a large amount of coupons to certain favored customers at the time it was organized, I do not know about the instance. I was not with the Profit Sharing Corporation in 1914. The records of the books would show if it is a fact. I have never had occasion to examine the books with reference to that subject. I cannot remember that the matter was ever brought to my attention. I cannot
5346 remember ever having heard it before.

I think the Washington Shirt Company have been with us almost from the beginning. I don't know just what date the contract started, but they were using our service when I became President of the Company in 1916.

We have certain customers who do not give out our

coupons except when people ask for them. The Washington Shirt Company is one of them. They do that
5347 save money.

While I was with the United Cigar Stores Company all
(3938) salesmen were instructed to give out coupons with the sales. Not all customers took the coupons. The coupons are too valuable to leave handy on a counter, to give away. We could not leave them on the counter, the customers would take them away. We had to put them behind the counter.

The United Cigar Stores does not have sale days every Friday and Saturday, and it is not always both Friday and Saturday, but the custom has prevailed off and on since the latter part of 1918. Prior to that we had sale days twice a year. Prior to 1918 we did not have sale days on Saturdays where we gave extra inducements in the way of certificates; that is my recollection, we did not have it prior to that. In some cities at the present time we give 10 certificates with each dollar purchase at these sale days. We do it in Chicago and in New York City, and I think in Newark, New Jersey.

5348 Generally speaking, we give 5 certificates with a dollar purchase on Fridays and Saturdays outside of the metropolitan district of New York and the City of Chicago and in those places we give 10 with a dollar pur-
5349 chase. I am speaking of the present time. We have changed this thing since 1918 from time to time. Sometimes 5 certificates and sometimes 10. We have given at some time more than 10. I never heard of 20 being given away. The largest amount I have known of is 12. Those sales are Friday and Saturday of each week in these cities where we are giving these large premiums. On Friday and Saturday we do about as much business as we do in the other four days of the week. In certain stores undoubtedly as much business is done on Friday
(3939) and Saturday as all the rest of the week. These
5350 stores are open on Sunday.

In the opinion I gave as to what I thought would be the amount of the Wrigley redemptions I included these outer wrappers or coupons. I cannot answer how many of these coupons I understand Mr. Wrigley used during the accounting period. My memory is not fresh on that. In my estimate I included the fact that there were 20 of these outside wrappers with each box. I included that

in my statement of contingent liabilities. The amount
5351 that we set up on our books was based, not on what Wrigley's sales of gums were, but what he advised us that he had issued.

As to whether there was any disparity between Wrigley's sales of gum and his advices to me as to his issue, I will say there might have been slight variations at times due to the fact that in certain states there was legislation that prohibited the packing of coupons.

At certain periods during the infringing period, between 1914 and 1918, the State of Wisconsin had restrictive legislation, but not continuously. I also think that during that time the State of Indiana had restrictions on the issuance of coupons. I cannot recall any other State that I would be definite about.

5352 The State of Washington does not permit premiums, but they do permit cash redemptions and have all along, and also the State of Oregon. I mean the State of Oregon permits cash redemptions but not premiums.

(Mr. Aldrich then asked the witness:

Q. What proportion of the redemptions are of the
(3940) outside wrappers, what proportion of the 5 and what proportion of the 25 in your experience?

The witness then asked Mr. Aldrich whether he referred to the United Profit Sharing Corporation's experience with the Wrigley coupons or with all coupons. Mr. Aldrich said he would ask the witness to answer the question both ways.)

The witness continued:

I am sorry to say that I cannot give those figures from memory, and as far as the United Profit Sharing Corporation's regular coupons, that's the ones that are paid for at time of delivery, we do not keep a quantity of
5353 issue and redemption by denominations separately. We reduce them all to a coupon unit. That's one-fifth of a cent.

The United Cigar Stores Company owns the premium stores I have referred to in my testimony. The United Cigar Stores Company has one redemption station. That is a store also carrying a stock of premiums. It is the
5354 only one we have. The larger part of the business done by these redemption stations owned by the United Cigar Stores Company is in redemption of the United Cigar Stores' coupons. I would say about 65 or 70% of the

redemptions effected through these cigar stores are United Cigar Stores coupon redemptions. I have not had occasion to investigate that within the last two or three months, but I have seen the figures from time to time very often. I would say the percentages have decreased in recent times. I am referring to all of the United Cigar Stores redemption stations.

(3941) *Redirect Examination by Mr. Mayer.*

5355 All but one of the redemption stores is owned by the United Cigar Stores Company, and the other one is owned by the United Profit Sharing Corporation.

The United Cigar Stores Company buys and distributes the merchandise that is given out to the collectors of United Profit Sharing coupons and United Cigar Stores Company coupons. As the United Cigar Stores Company redeems coupons issued by the United Profit Sharing corporation, the United Cigar Stores Company gets repaid or remunerated by the United Profit Sharing Corporation, both for merchandise and for service.

I know there was restrictive legislation on the trading stamps or coupons in the State of Wisconsin between
5356 July, 1914, and December 1, 1918. Washington and Oregon, I think had legislation prior to 1914. As to Indiana, I am not sure as to the date.

During the entire time while the United Cigar Stores Company and the United Profit Sharing Corporation were issuing coupons, the instructions to the employes were to give them out with every purchase amounting to the proper sum.

5357 I testified that there were some people who did not take the tendered coupons. The clerks were instructed to hand out the coupons with the purchase. There was a check kept on the clerks for the purpose of enforcing that instruction which required them to hand out coupons with every purchase. We had representatives visiting the stores from time to time and making purchases for the sole purpose of ascertaining whether or not the
(3942) clerk was voluntarily issuing coupons to every customer that made a purchase. Those tests have been made off and on ever since we began business in 1901. Certainly ever since I have been with them, and that's 1903.

5358 No permanent record was kept of the results of those

investigations. I do not recall that we made any other test on that subject.

Inventories were taken from time to time as to the number of coupons that were in the stores and compared with what there ought to be as compared with the sales. From these figures we ascertained what the store should issue, and if there was an average that amounted to any considerable amount, why then we naturally would make tests in this store to see if they were issuing with every
5359 purchase. As long as the stores did not show a shortage, we were satisfied with the result.

A recent test that I have worked up with the figures in the office showed that about 85% of the coupons tendered were taken away, but I do not consider this a good test as there is absolutely no doubt whatever but what a greater percent than 85% of the coupons tendered were taken away. In my opinion 95% of the coupons tendered to the customers are taken away by them as tendered.
5360 I have knowledge on that subject which enables me to give an opinion.

.7763 is the first percentage shown on Exhibit 55 referring to the year 1907 under the last column headed
5361 "Yearly %". I mean by that that of the number of United Cigar Stores Company's certificates issued in 1907, 77.63% were redeemed.

(3943) Thursday, November 16, 1922. 10.30 A. M.

5362 CHARLES A. ATWOOD, called as a witness on behalf of Wm. Wrigley Jr. Company, being first duly sworn, was examined by Mr. Mayer and testified as follows:

Direct Examination by Mr. Mayer.

My name is Charles A. Atwood. I live in Cincinnati. I have lived there for 13 years. I have been employed by Procter & Gamble Company during the past 13 years.
5363 The first four years I was in the Traffic Department, since which time I have been in the premium and advertising department. The Procter & Gamble Company, since I have been with it, and now, is engaged in the manufacture and sale of soaps, cooking fats, cottonseed oil, glycerine, oleomargarine, and various other by-products.

I will explain what the premium end of the business is. We had two departments primarily. Of course, the coupons were issued with the soap—wrappers around the soap. By two departments I mean stores and mail order department. We had various stores which carried stocks of merchandise which we redeemed for the coupons, and customers who could not reach the stores sent their coupons through the mail order department which was the headquarters. We gave the merchandise out for the coupons. There was an outside wrapper on all soap sold by us, which was called a coupon. The customers saved those wrappers or coupons, took them to our premium stores or sent them to our mail order department, in exchange for which they secured premiums or merchan-
(3944) dise. I use the word "premiums" as synonymous with merchandise. I have a sample of that wrapper.

(Mr. Mayer offered in evidence the sample wrapper produced by the witness. Mr. Aldrich objected to its
5365 introduction on the ground of immateriality, irrelevancy and incompetency. The objection was overruled and the wrapper so offered was received in evidence and marked Wrigley Exhibit 63, Atwood No. 1.)

5366-67 (Wrigley Exhibit 63, Atwood 1.)

(3945) A wrapper exactly like the Exhibit was placed
5368 around each bar of soap. I will qualify that by saying

the faces were the same, the backs were different. From time to time we changed the back of the wrapper.

Atwood No. 1 is of the general type that we were using
5369 first. The soap was packed in boxes and shipped to retailers, first to jobbers and also to retailers, and resold to consumers of laundry soaps.

The front center panel of that Exhibit is the coupon. The black center panel is in the center of the face of the
5370 wrapper. The words "Star Soap" are printed on it. The black center panel is the parallelogram immediately underneath the words "cut out black center panel. No other part of wrapper good for premiums." Wrigley Exhibit 63, Atwood No. 1, is printed in colors. The
5371 colors are black and red printed on a white background.

A customer has to pay the purchase price of the soap in order to get one of those bars of soap containing one of those coupon wrappers. Between 1914 and 1918 the average price was 5 cents per bar to the consumer. If a customer wished to utilize the coupon portion of the wrapper for redemption she had to save them until she had a sufficient quantity to secure a premium or pre-
5372 miums at either our premium stores or mail order department. If she wanted to redeem them she would send in the black center panel, and in order to get that black center panel it was necessary to cut it out from the back of the wrapper.

5373 The coupon was not redeemable for anything but merchandise. It was not redeemable in cash. My institution
(3946) redeemed these coupons in merchandise as they were presented. We never redeemed any other kind of coupons excepting those issued by ourselves. Those coupons were each worth one-fourth to one-fifth of a cent in merchandise.

Star Soap was one of the brands of soap dealt in by Procter & Gamble Company for many years; ever since 1903; it was one of our principal brands. The principal brands of soap which we wrapped in coupons similar to Wrigley Exhibit 63, Atwood No. 1, were Star Soap, Gold Soap, and Satin Gloss Soap. We wrapped Star Soap in in wrappers, a portion of which was a coupon, from 1903
5374 to the spring of 1916. We wrapped Gold Soap and Satin Gloss Soap in wrappers containing coupons similar to Wrigley Exhibit 63, Atwood No. 1. The center panel of it alone was what we called a coupon.

We distributed Gold Soap and Satin Gloss Soap, and the coupons were redeemed the same way as Star Soap. The purchase price that the consumer had to pay for the Gold Soap and the Satin Gloss Soap from 1914 to 1918, both inclusive, was the same as he had to pay for the same period for Star Soap. The redeemable value of
5375 the coupons contained in the wrappers around the Gold Soap and Satin Gloss Soap was the same as furnished with the Star Soap.

My company wrapped Gold Soap since 1907, and Satin Gloss Soap since 1910, in wrappers containing coupons of the kind that I have described. We wrapped Gold Soap that way up to and including part of 1916.

5376 We entirely ceased issuing coupons in 1916. There was no other wrapper around a bar of soap than the one
(3947) I have identified as Atwood No. 1 except an inside blank wrapper protecting the soap from the wrapper. I refer to the redemption of these coupons through stores, and also by mail order. The stores I refer to were Procter & Gamble stores carrying a stock of general merchandise for which customers came in and secured merchandise in exchange for their coupons.

5377 My company did not use the merchandise that was in those stores for any purpose other than to exchange it for our coupnos. We had approximately 30 of those stores during 1913 to 1915. I will say we had 15 to 20 between 1910 and 1913. In 1915 we closed up several of the smaller stores. After we ceased issuing the coupons we started closing the stores as quickly as we were able because of the falling off of the redemptions which took us up until 1917. In 1917 we closed them all. After
5378 1917 we had no redemption stores. We had only our mailing department. Those various stores were located in St. Louis and in the East.

I will state in what territory my company was selling soap containing these coupon labels: Star Soap all over the United States, Gold and Satin Gloss Soap in and around New York City, including Long Island, the northern part of New Jersey and New York State as far north as Albany. That is the territory I have described as the territory in which we were selling the different brands of soap from 1910 on until we discontinued using these coupon labels.

If a customer wanted to redeem these coupon labels

by mail he would have to send them to our mail order department in Cincinnati, and up to and including 1917 to our mail order department in New York City. The mail
(3948) order department in New York City was closed in
5379 1917. There was no place where coupons could be redeemed by mail excepting in Cincinnati and New York City. That is true of the entire period of time beginning with 1910. About 60% of the coupons that were redeemed by my concern were redeemed at premium stores, and about 40% by mail when the stores were open. After the stores were closed our redemptions were exclusively by mail. We still have a mail order department for the redemption of coupons. We are still redeeming them. My company keeps books and records showing the number of these coupons that I have described issued by it from time to time and the number of them redeemed. Those records have been kept since we have been in the premium business. Not all of those records are still in existence. The redemption records prior to 1910 have
5380 been lost or misplaced. I don't know when that happened. I have recently looked for them, but could not find them. We made an ordinary search for them, a very careful search in our records. We have the records of the coupons issued and redeemed in 1910 and since. Those books have been correctly kept. We have had occasion from time to time in the course of our business to refer and use them. Those records are kept in the due course of our business, and the entries were made therein from
5381 time to time as the coupons were issued and redeemed.

I know approximately what number of coupons were issued by my company in the sale of its Star, Gold and Satin Gloss soaps and what number of coupons so issued were redeemed by my company. A transcript of our books and records, showing the coupons issued with the Star, Gold and Satin Gloss Soaps and redeemed, has
(3949) been prepared. I have prepeared it. I have it here. The statement which I have produced is a correct transscript of what the books and the records of the company show, and I took it off of the books myself personally.

5382 (Mr. Mayer then offered the said statement in evidence. Mr. Aldrich objected on the ground of immateriality, irrelevancy and incompetency. The objection was overruled. The said statement produced by the witness,

and so offered, was received in evidence, and marked Wrigley Exhibit 63, Atwood No. 2.)

5383 Said Wrigley Exhibit #63, Atwood No. 2 is as follows:

(3950) WRIGLEY EXHIBIT 63: ATWOOD No. 2.

Wrigley Exhibit 63; Atwood No. 2.

"STATISTICAL STATEMENT OF COUPON ACCOUNT
THE PROCTOR AND GAMBLE DISTRIBUTING COMPANY
FROM 1910 TO 1921, INCLUSIVE.

Year	Coupon Wrappers Issued	Coupons Redeemed	Percentage of Coupons Redeemed	Cumulative Totals of Redeemed	Percentage of Cumulative Totals of Redeemed
1910	41,994,600,	20,729,743,	49.36%	20,729,743,	49.36%
1911	39,714,900,	24,532,029,	61.77%	45,261,772,	55.39%
1912	46,613,300,	31,448,998,	67.47%	76,710,770,	59.77%
1913	50,574,500,	32,919,413,	65.09%	109,630,183,	61.28%
1914	51,687,580,	35,050,343,	67.81%	144,680,526,	62.74%
1915	87,784,400,	38,228,390,	43.55%	182,908,916,	57.45%
1916	112,784,400,	39,263,348,	34.81%	222,172,264,	51.53%
1917	.....	38,322,799,	.....	260,495,063,	60.42%
1918	.....	13,605,579,	.....	274,100,642,	63.57%
1919	.....	3,638,246,	.....	277,738,888,	64.42%
1920	.....	602,986,	.....	278,341,874,	64.56%
1921	.....	165,055,	.....	278,506,929,	64.60%
1922		*127,704,		127,704,	
				278,634,633	

*to Oct. 28th 1922."

Note: The last part of the statement beginning "1922" was added in pencil / by the witness at the hearing.

(3951) The records from which I have prepared this Ex-
5384 hibit are available for inspection, by the master or counsel.

Wrigley Exhibit 63, Atwood No. 2, shows the total number of coupons issued annually during the years 1910 to 1916, inclusive. It also shows the coupons redeemed annually in 1910 up to October 28, 1922; and the percentage of coupons redeemed annually, 1910 to 1916, inclusive. By that I mean the percentage of coupons redeemed to those issued during the same period of time. It also shows the cumulative totals of coupons redeemed in 1910 to October 28, 1912. That is, of those issued during the same period, and the percentage of cumulative totals redeemed from 1910 to 1921, inclusive. 64.6% of the coupon wrappers shown on Exhibit Atwood No. 2 to have been issued were redeemed at the end of the year 1921. Since then, up to October 28, 1922, an additional 127,704 coupons have been redeemed. I have

not made a calculation to show to what extent that would increase the 64.60% of cumulative redemptions. The pencil figures and writing on that Exhibit are in my handwriting,

5385 *Direct Examination by Mr. Lane.*

This Exhibit shows that we discontinued the issuing of these premium labels in 1916, and that we have been redeeming these labels constantly since 1916 up to and including the present time. The figures under the head-
5386 ing "coupons redeemed" in column 3 subsequent to the year 1916 show the number of coupons redeemed since we discontinued the wrapping of the soap with those labels. The reason for the increase in the cumulative
(3952) percentage since that time is because we are redeeming old coupons against which there are none issued during the corresponding period of time. Since we have discontinued the wrapping of soap with these labels there has been an increase in the cumulative per cent. from 51.53% to over 64.6%. We are constantly redeeming coupons every day. I have been asked to investigate the coupons which are coming in at the present time so that I can give a sample of the way in which they come in. I have the records showing a recent day's redemptions. I will state how I have secured this in-
5387 formation. I went to our mailing department and picked out of the mail at random the receipts of one day which I personally opened and examined. That day was November 3, 1922. I happen to pick out that day because that was the day I was looking for the information. The Wrigley Company requested me to get that information. I just took the first day's receipts after getting that request. I have been following these redemptions from time to time since I quit issuing these coupons. The results shown on this statement which I have prepared is a fair average of the general run since that time.

5388 (Mr. Lane, who was then examining the witness, offered said statement in evidence. Mr. Aldrich made the same objection that he had made to similar offers. The objection was overruled.

Said statement so offered was received in evidence and marked Wrigley Exhibit 63, Atwood No. 3.

5389 Said Wrigley Exhibit #63, Atwood No. 3. is as follows:

(3953) WRIGLEY EXHIBIT 63: ATWOOD No. 3

Wrigley Exhibit 63; Atwood No. 3.

"ANALYSIS

PROCTER & GAMBLE DISTRIBUTING CO'S.
PREMIUM COUPONS RECEIVED
IN MAILS NOV. 3, 1922

Issued	Age	Batch-1 No.	%	Batch-2 No.	%	Batch-3 No.	%	Batch-4 No.	%	Batch-5 No.	%
Prior to 1/1/1904	Over 18 yrs. old	40	16.8								
Prior to 1/1/1906	Over 16 yrs. old	9	3.8								
Between 1904-06	Over 16 yrs. old	34	14								
Between 1906-10	Over 12 yrs. old	90	37.6								
Prior to 1912	Over 10 yrs. old	..	....	93	55.7	12	24.5				
Between 1912-14	Over 8 yrs. old	24	10	17	10	17	34.7	15	22.4	28	41.2
Between 1914-15	Over 7 yrs. old	41	16.8	46	27.8	18	36.8	39	58.1	28	41.2
During 1916	Over 5 yrs. old	2	1	11	6.5	2	4	13	19.5	12	17.6
		240	100%	167	100%	49	100%	67	100%	68	100%

(3954) The Exhibit just introduced in evidence shows five
5390 packages of coupons from five different customers. They are referred to on the document as batches. In the first batch there were 240 coupons from one customer, 40 of which were coupons over 18 years old or 16.8%. That is referred to in the first line reading "Prior to 1/1/1904". There were 9 coupons over 16 years old or 3.8%.

There were 34 coupons over 16 years old issued between 1904 and 1906, or 14%.

There were 90 coupons over 12 years old, or 37.6%.

24 coupons over 8 years old, or 10%.

41 coupons over 7 years old, or 16.8%.

2 coupons over five years old, or 1%.

All of the coupons that are shown on this analysis which I have presented here in Wrigley Exhibit 63, Atwood No. 3, refer to coupons which were issued prior to 1917 as we discontinued at that time. The numbers under the headings "Batch 1", "Batch 2", "Batch 3", "Batch 4" and "Batch 5" refer to different customers sending in the coupons in that mail. I was not requested to see if I could find other batches of earlier date.

5391 *Direct Examination (Continued) by Mr. Mayer.*

The back of the wrapper which I have produced here and which has been marked Wrigley Exhibit 63, Atwood No. 1, shows the pictures of different articles with some letters and figures underneath them. Those letters and
(3955) figures then appear at the bottom of the back and describe the pictures. Then there is a column headed "Panels" underneath which appears certain figures. The word "Panels" as used on the back of that Exhibit refers to the coupons. In our business we refer to the coupon as the panel. We do not call it the coupon in our own office. We call them panels, but they are coupons. The number of panels to procure a certain article, fluctuated.

5393 From the year 1914 on until we discontinued issuing panels or coupons in 1916, the number of panels required to procure the certain article increased. It was more after 1914 than it was in 1914.

I have a sample of the wrapper that we began to use when we first discontinued using the panel wrapper or coupon wrapper.

5394 (Mr. Mayer offered in evidence such a wrapper produced by the witness. Mr. Aldrich objected on the ground of immateriality and irrelevancy. The objection was overruled and the wrapper was admitted in evidence and marked Wrigley Exhibit 63, Atwood No. 4.)

5395-5396 (Wrigley Exhibit 63, Atwood No. 4.)

(3956) The front of that wrapper, Atwood No. 4 is sub-
5397 stantially the same in appearance as the front of Atwood No. 1. Atwood No. 4, however, omits the words, "Cut out black center panel. No other part of wrapper good for premiums," above the center panel in Atwood No. 1. The back of Atwood No. 4 contains nothing referring to coupons, and in that respect it differs from the back of Atwood No. 1. Wrappers such as Wrigley 63, Atwood No. 4, have come back for redemption. The wrappers similar to Atwood No. 4 that were issued by us in 1916 were included in the number of coupons wrappers issued in 1916 shown on Wrigley Exhibit 63, Atwood 2. That continued for the whole year of 1916.

5398 In 1918 we discontinued wrapping soap in wrappers similar to Wrigley Exhibit 63, Atwood No. 4, so far as

the back is concerned and the premiums. That was January 1, 1918.

After we began to use Atwood No. 4 we notified the trade that we were not issuing coupon wrappers any more. In 1918 we printed a notice on the back of the wrappers that the Star Soap coupons or wrappers were of no value as far as redeeming them for premiums. We printed a similar notice on the wrappers that we used
5399 for the Gold and Satin Gloss Soaps. That notice contained a definite statement to the effect that we had withdrawn all premium offers on that particular brand of soap March 1, 1916, and that the wrapper was not good for premiums. The only notice that we sent out at any time regarding the discontinuance of our use of coupon wrappers was on the wrappers. We began to print such a notice on the wrappers in 1918. That notice was to the effect that we had discontinued premium offers on those various brands of soap March 1, 1916, and that
(3957) the wrapper was not good for premiums.

That handwriting "1917" written in ink on the back of Wrigley Exhibit 63, Atwood No. 4 was my handwriting. The figures "1917" means the Exhibit was issued
5400 in 1917. We first started to use the panel wrapper marked Atwood No. 1 and discontinued the use of them in the spring or summer of 1916. The next thing we did was to substitute for that style of wrapper a wrapper similar to Atwood No. 4. We began to use the form of wrapper known as Atwood No. 4 during the summer and fall of 1916. We continued to use a form of wrapper like Atwood No. 4 up to about the first of 1918. Then we used a form of wrapper with the specific notice of discontinuance. I have a specimen of that form of label.

(Mr. Mayer then offered in evidence the form of label last referred to by the witness. Mr. Aldrich objected.
5401 The objection was overruled.

The said label was admitted in evidence and market Wrigley Exhibit 63, Atwood No. 5.)

5402 (Wrigley Exhibit #63, Atwood No. 5).

(3958) We discontinued using this third form of wrapper
5404 marked Atwood No. 5 about the first part of 1919. I have a speciment of the form of wrapper which we began to use about the first part of 1919.

(Mr. Mayer offered in evidence the specimen of the

wrapper last referred to by the witness. Mr. Aldrich objected. The objection was overruled.

The wrapper was received in evidence and marked Wrigley Exhibit 63, Atwood No. 6.)

5405-5406 (Wrigley Exhibit 63, Atwood No. 6.)

(3959) We made similar changes in the forms of the wrap-
5407 pers in which we wrapped our Gold Soap and Satin Gloss Soap as those shown on the four samples of the Star Soap wrappers which I have produced and which have been marked respectively, Atwood No. 1, No. 4, No. 5 and No. 6. Those changes on the labels used on the Gold and Satin Gloss brands were made in the same way and at practically the same time as those made in connection with the Star Soap wrappers.

5408 Thursday, November 16, 1922. 2:15 P. M.

CHARLES A. ATWOOD, resumed the stand for further direct examination by Mr. Mayer:

I testified this morning that the wrapper marked Atwood No. 4, and which has nothing on it indicating that any part of it is a coupon, is the wrapper we commenced to use after we discontinued the panel or coupon wrapper. Some of those wrappers like Atwood 4 came back to us for redemption. We redeemed some of them. We quit redeeming them after we put out the specific notice
5409 of discontinuance. The specific notice of discontinuance is the document which I have now before me, and which is marked Wrigley Exhibit 63, Atwood No. 5. I think we began to issue that particular form of wrapper the latter part of 1917, but to be absolutely sure it would be about the first of 1918.

I have Wrigley Exhibit 63, Atwood No. 2, which shows
(3960) the annual issues and redemptions beginning with 1910, before me. I know to what extent the list of coupons shown on that Exhibit to have been redeemed in-
5409 cludes non-label or coupon bearing wrappers marked Wrigley Exhibit 63, Atwood No. 2, and which we began to use immediately after we discontinued the panel coupon wrappers. The redemption of those coupon wrappers appear in the 1916 and 1917 figures in Exhibit 63, Atwood No. 2. That is, in the coupons redeemed. The

39,263,348 coupons redeemed in 1916 and the 38,322,799
5410 coupons redeemed in 1917 contain some of those wrappers marked Atwood No. 4. We did not redeem those Atwood No. 4 wrappers after 1917. I will say that in the 1917 redemptions shown in that report there are included about 15 to 20% of the non-premium coupons. The reason I am giving the maximum of 20% is because we had a ruling that if a customer brought in over 20% of non-premium wrappers with a batch of premium wrappers, they would not be redeemed, but if a customer
5411 brought in less than 20% of non-premium coupons with the premium coupons, they were honored. We did not redeem those non-coupon wrappers at all unless they were brought in with coupon wrappers.

As to whether I can give the master any greater
5412 knowledge on the subject of the percentages of non-coupon wrappers that were redeemed than I have already stated, I will say by arriving at a conclusion based on our redemptions and the falling off of the redemptions, the figures show that 20% is a very liberal allowance, and that 15 or 20% would be more actually near the real redemption for non-premium wrappers.

(3961) I have made a calculation as to what the percentage
5413 of cumulative totals of redeemed coupons would be at the end of 1921 upon the assumption that 15%, and also upon the assumption that 20% of the 1917 redemptions were non-coupon wrappers. I will state the basis upon which that computation was made. I allowed a 15% de-
5414 duction of our 1917 redemptions, and figured that percentage against the cumulative percentage for 1921 and reduced it about 2%. That is, the cumulative percentage was about 2%. I can give the exact figures. On a 15% allowance or deduction it would change the figures 64.60% to 63.27%. In other words, if I assume that 15% of the coupons redeemed in 1917, as shown by Wrigley Exhibit 63, Atwood No. 2, were the non-coupon wrappers, then the total percentage at the end of 1921 of redeemed
5415 coupons, would be 63.27% If 20% of the coupons redeemed in 1917, as shown on Wrigley Exhibit 63, Atwood No. 2, were non-coupon wrappers, the percentage of all coupons redeemed at the end of 1921 was 62.08%.

There never was any time limit upon the premium wrappers issued by my company. They are still redeemable. The average number of 5 cent bars of soap

that the ultimate consumer was buying from my concern during this period of time that we were issuing these coupon wrappers was one to two bars. Retardation in the redemption of our premiums was caused by the closing of our premium store and also by charging more coupons for the same premium. In other words, ad-
4516 vancing a premium from 100 coupons to 125 coupons for the same article. Also our premium business, redemption business, fell off; when times were good the laboring classes had lots of money. The fact that labor has money
(3962) makes a difference as to whether redemption of the coupons is retarded or not.
5417 Coupons and soap wrappers do not mean so much to them as when times are hard. When they have got the cash they go out and buy things; when times are good they have got the cash to go out and buy things; when times are bad they save everything in order to economize.

We had specific experience as to what would cause an acceleration of redemptions of our coupons. We have caused acceleration by reducing the number of coupons required to purchase a given article. If an article ordinarily was 100 panels, we would reduce it to 50 panels like a bargain sale. Other times redemptions were accelerated by rumors that we were going out of the premium business which caused a run on the redemption savings. I had an experience in New York City in 1915 when there
5418 was a run, with the result of an increase of redemptions.

Cross-Examination by Mr. Aldrich.

During the last 9 years with Procter & Gamble I have been office manager in the premium and advertising department. I was buyer of the premiums. As office manager I kept the premium stores supplied with goods to be exchanged for coupons or panels, and I also had charge of keeping track of the issue of coupons. Clerks in the stores and clerks in the general office had charge of the bookkeeping in connection with the transaction of this coupon or premium business. It was all under my supervision. The issuing of coupons is incidental. They
5419 are wrapped with the soap as it is shipped. That is a
(3963) factory proposition. I had nothing to do with that. Not otherwise than getting the wrappers prepared, ordering the wrappers prepared. The wrappers are

ordered by the manufacturing department. Before they are ordered they are submitted to us for any corrections or changes that we want to make or have to make. I had nothing to do with the actual ordering of the wrappers. I kept track of the number of coupons issued, by receiving reports of the sales from the sales department. Those reports were sent in yearly. They were divided as between the different brands of soap. I have not a
5420 sample here of the report made by the sales department to the premium department on that subject. We would not have entries of issues until after the end of the year. All our coupons were of the same value, and that value was expressed in terms of merchandise. They had no cash value.

As the price of merchandise went up or down the value of our coupons so expressed in merchandise fluctuated, just like dollars and cents. It would not be more accurate to say like German marks.

5421 As to whether the purchasing power of the coupon decreased as the price of merchandise increased, I will say it took more coupons to get the same article as the price of the merchandise increased. We aimed to get up a new premium list about once a year. Neither during the war period or immediately preceding it did we do that more frequently than once a year.

When I brought Wrigley Exhibit 63, Atwood No. 1 here, I did not mean to be understood as saying that the premiums named on the back of that coupon and the number of coupons required remained uniform during the time of the use of the coupon. We would change
(3964) the premium list while soap wrappers were out. A soap wrapper issued now may not be redeemed, or a soap wrapper issued in 1916 may come in the next year, but we use the premium values shown in our premium lists. In our redemption we used the premium value shown in the premium list at the time of redemption.

5422 As to whether it is correct to say that these values expressed in coupon numbers, as held by the consumer, did not mean anything if we had made a change in the values required at the time the coupons were presented for redemption, I will say such a contingency could hardly arise because the wrappers and the coupon list were
5423 issued practically during the same period.

On Exhibit Atwood No. 1 is a partial list signifying

premiums and the number of coupons required for the respective premiums. We had a catalog outside of this. Our catalogs were premium lists, including articles both shown and not shown on the coupons.

(Mr. Aldrich then asked the witness:

Q. Was your former answer given to my question asking you whether the number of coupons stated on the coupon at the time it was issued, or the number required at the time it was presented for redemption, and which you answered by stating that it was the number required at the time presented for redemption, does that also apply, that answer, to the premium lists?

A. Yes.

(3965) Q. I again recur to the question which I asked you a little while ago and for which I asked an answer which I understood you to answer at last in the negative. I will ask that that question be again read and see if you still wish to answer, in view of your last answer, in the negative.

(Question read as follows: So that these values, expressed in coupon numbers, as held by the consumer, did not mean anything if you had made a change in the values required at the time the coupons were presented for redemption, is that correct?)

A. Yes.

Q. Now, which answer do you wish to have stand, sir, the one in which you have answered that question no or

5424 the one in which you have answered it yes?

The witness answered yes.

Counsel for the Wrigley Company objected. The

5425 objection was overruled.)

5426 I mean that if a customer presented coupons for a premium, furnishing the value on the back of the coupon after a premium list had been revised, the premium value shown on the wrapper would not be honored any more than a bargain sale advertised in a newspaper one week would be honored three weeks later.

(3966) My answer does not imply that we adopted the rule I stated on the records for the purpose of hastening redemptions. Our practice with respect to putting premium values on the back of the wrappers simply meant that we would print wrappers with values on them. We

5427 do not guarantee that those values would continue indefinitely. The only reason the value was changed is be-

cause we had to pay more or less for the merchandise. If we paid less for the merchandise we gave more at the time of redemption. The average consumer understood that the representation printed on the back of the coupon as an inducement to using the soap was a current price list. I do not recall that there was anything on the coupon to indicate it was only a current price list.

5428 I first learned that the issues and redemptions prior to 1910 were missing when I started to look for them. That was in September, 1922. I came to start to look for them because we had a request from the Wrigley Company asking us if we could show our redemption. I have not that request with me. It was both in the form of a letter and in the form of a personal interview. The person interviewing me was Mr. Ellis, who was connected with the Wrigley Company. I do not know how.

I saw Mr. Lane recently, the last time I was up here.

5429 That was the first time I ever saw him. This is my second visit here. I had not seen Mr. Lane prior to my coming here. My discussion as to this matter was wholly with Mr. Ellis and Mr. Stanley, as representing the Wrigley Company. I first saw Mr. Stanley last week when I was up here.

Some of the figures I got here were prepared since I saw Mr. Stanley. I did not have any figures prepared (3967) that I have not produced here. The one I have pre-

5430 pared since I met Mr. Stanley is a percentage of redemptions on our current mail, on November 3rd.

At the time that I learned that the records prior to 1910 were lost, I had seen the chief clerk in our department and the clerk under him, and I personally made a search for them. That did not come to me as a matter of great surprise because the records were so old and we never referred to them, never had occasion to use them, they were lost sight of. We never had occasion to refer to them when we were making redemptions of coupons that antedated 1919. This is the first time we have had occasion to do that since we have been out of the premium business. That occasion was in connection with this search.

5431 Referring to this investigation or effort to discover those books prior to 1910, after looking through the vault in which we kept them I asked the chief clerk to see if he could find them, and he was not able to do so, and we

gave it up. I did not think it was worth while to go to the trouble of finding them. I thought the figures we were giving them, which was the peak of our premium business, would perhaps give them what they wanted. I understood they wanted the statement of our experience showing the coupons that had been issued and what we had redeemed, and the percentage.

As to whether I thought that the experience antedating 1910 would have an important bearing upon the number issued and its relation to the total redemption, I will say I did not think anything about it. I did not know what was wanted and I give what we had with the least trou-
(3968) ble. I do not say now that I have made such a search as would lead me to be willing to say that the books prior to 1910 had been destroyed. 1910 and the subsequent years were the peak of our premium business. I
5433 do not think that if we had the years prior to 1910, that is, from 1903 on, these percentages would be considerably different from those that I have now adduced.

The premium business was very much smaller in the first years. The average percentage of redemption would not be so very much lower. It would not change the cumulative percentage any appreciable amount because you are running into millions. I have no knowledge or information off hand as to the number of coupons issued during the first four years of Procter & Gamble's experience in the coupon matter. I have data in our office that has been compiled which would enable me to tell about what their total issue was for each of the four years or four and a half years of issue, and for the subsequent years up to 1910. I will state why those figures have not been included in these tabulations which I have produced here for the purpose of showing what our total experience has been instead of a partial experience.

In the first place I do not know what was desired. We could not find the redemptions prior to 1910, and could not give a per cent. of course, against the issue, and for that reason I omitted them. The earlier experience had more to do with the issues than with the redemptions. We have data in our office aside from the books which are missing which gives the necessary information to know what our issues were during those first years.

5435 As to whether I want the master to understand that while I have information as to the issues during the

(3969) years preceding 1910, I have no data of any kind in my office showing what the redemptions had been prior to 1910, I will say no. I mean to say that they have been misplaced.

I have data in my office concerning the issues prior to 1910. I also have information likewise with reference to the redemptions prior to 1910, but they were misplaced. As to whether or not I have any data or information that at any time has been compiled or prepared from the lost books which would enable me to know or give information as to the history of the coupon business of Procter & Gamble prior to 1910, I will say we have books showing all that information, but those particular books showing the redemptions prior to 1910, when we changed our books, those particular books were misplaced, have been
5437 misplaced.

There is nothing I know of with respect to the period prior to 1910 outside of the particular books upon the subject of either issues or redemptions. I would be wholly in the dark then on the subject of both issues and redemptions prior to 1910 unless I could find those books. I have never had any occasion during the conduct of this premium business to make any analysis of our business prior to 1910, with the exception of the reports we got up in our office.

We had reports in our own office as to the business from year to year, and in every department, including the premium and stores department. Those reports were all destroyed around 1919, somewhere along in there; a
5438 lot of the reports were destroyed six months after they came in from the stores. The reports were destroyed by the clerks, in accordance with general instructions. I
(3970) cannot say whether that instruction was in writing. The thing was in vogue when I came in the department, as many other details were.

I have no knowledge or information which would enable me to tell approximately what the annual issues were for the first 4-1/2 or 5 years after Procter & Gamble commenced the premium business in 1903. That's true likewise of the redemptions. I had no reason for discontinuing the coupon and premium business in 1916. The executives discontinued the business. I had a general un-
5439 derstanding of why they did it. The general understanding was business was so good at the time we wanted

to sell our own soap rather than someone else's merchandise; another thing, merchandise was so hard to get, the cost was jumping up, it was practically impossible to keep the catalog intact from the time you would get your samples to the time you got it out, and they thought it was a very good time to get out of the premium business which they had desired to do.

During the first two years of the war there had been a decline in the percentage of redemptions. I attributed that to the good times. There had been, broadly stated, during the period which Wrigley Exhibit 63, Atwood No. 2, covers, an increase each year in the number of coupons issued, with the exception only of 1911. The company decided on March 1, 1916, to stop the coupon business, but the wrappers were being issued at the time and
5440 were issued during a part of 1916. We had very much larger sales that year than we had in the prior year. That was so with all our business and included soap with which coupons were issued. The premium business was
(3971) actually discontinued in 1917. I mean by discontinued
5441 by issuing coupon wrappers. While the company reached this determination on March 1, 1916, to discontinue the premium business, we continued to issue premium wrappers during part of 1916, but none in 1917.

The statement on Wrigley Exhibit 63, Atwood No. 2, which shows a total issue in 1916 or 112,784,400 as compared with 87,784,400 in 1915, represents the increase in
5442 the sales of soap having coupons as between the two years. There may have been a very small percentage of the new wrappers late in 1916. I doubt it. By "new wrappers," I do not refer to Wrigley Exhibit 63, Atwood No. 4. These redemptions shown on Atwood No. 2 do not include the No. 4 wrapper. I do not think the issues of 1916 include any of these No. 4 wrappers. The 1916 issued wrappers as appearing on Wrigley Exhibit 63, Atwood No. 2, refer to wrappers corresponding to Exhibit 63, Atwood No. 1.

5444 I do not really know how late in 1916 we continued to use the coupon wrapper, being Wrigley Exhibit 63, Atwood No. 1. That is dependent on how the factory used up the number of old premium wrappers they had on hand. I think I had means of ascertaining when they commenced to use or had prepared Atwood No. 4 which
5445 was the next wrapper used. As explained before, this

wrapper, Atwood No. 4, was started to be used by the Packing Department in the latter part of 1916 or about January, 1917. I cannot say just when they started because it all depends on just how they used up the wrappers in stock.

5446 During 1916 we sold 112,784,400 bars of Star Soap,
5447 Gold Soap and Satin Gloss Soap. In the 112,784,400 coupon wrappers which Exhibit 63, Atwood No. 2, states we
(3972) issued in 1916, may have been included a few Atwood No. 4s. That was the entire sales of those three brands of soap during that year.

I had a record of that on my books. We did not differentiate in the year 1916 between our premium wrappers and this so-called non-premium wrapper, Atwood No. 4,
5448 because we redeemed them for a certain period. Therefore, we included in our statement the entire sales in 1916. At the time we commenced the use of Wrigley Exhibit 63, Atwood No. 4, we did not call them a premium wrapper, but we did consider them in the light of a premium wrapper. We knew that certain of those would come in. Therefore, they were considered partly as a premium wrapper because we did not want to cut off the premium business too quickly. Therefore, rather than to antagonize our customers, we redeemed part of those wrappers, to a certain percentage, during 1917, and when they were put out we had to consider them partly as a premium proposition because we knew they were going to come in.

5449 At the time Procter & Gamble issued the wrapper known as Atwood No. 4, I think their intention was that it should be both a premium and a non-premium wrapper. By that I mean if a customer got this wrapper, it would not tell her that we were giving up the premium business and therefore discontinue the purchase of the soap, and if she did look at it, and if it did say there was no premium on it, no premiums mentioned on it, she might throw it away. Therefore, to negative the premium business, ease it off as easily as possible, they brought out this first wrapper, the No. 4.

5450 My answer does not mean that such a firm as Procter
(3973) & Gamble were issuing the No. 4 wrapper to deceive their customers, and which Procter & Gamble could treat
5451 as a premium wrapper or not at their wish or will. The issuance was for the customers' benefit, rather than

to deceive the customer. We do not do that. If it was treated as a non-premium wrapper, as expressed thereon, it benefited the customer because if she incidentally saved it, she could have redeemed it to a certain extent. By "a certain extent" I mean at the will of Procter & Gamble, and to the extent that Procter & Gamble desired.

The No. 4 wrappers, if any, issued in 1916, are included in the 1916 figures of issued wrappers appearing
5452 on Exhibit 63, Atwood No. 2. We discontinued to issue those No. 4 wrappers during 1917. I do not think any were issued in 1918. I do not know the exact month in 1917 when the No. 4 wrappers were discontinued. I do not think any were continued in 1918 because by January, 1918, we had out this specific notice embodied in Atwood No. 5. I am able to say that was issued in January, 1918, because I got up the back, I had the form changed. I looked it up preparatory to this examination. It can be assumed that during the year 1917 we continued to use Atwood No. 4. That was a coupon wrapper or a non-coupon wrapper as Procter & Gamble might from time to time determine, and to the extent
5453 that they determined. While in 1917 I do not include it in my issues, I testified that so far as it was our will to redeem it, it is included in the redemption figures, as I have presented them in Wrigley Exhibit 63, Atwood No. 2, to the extent of not over 20%.

(3974) I have made no actual count for the purpose of ascertaining the number of non-coupon wrappers as shown by Atwood No. 4 had been redeemed. I have not caused any such count to be made of the No. 4 wrappers that have been redeemed in 1917. So far as I know, no such count has been made. No such count has been made of the 1917 non-premium wrappers.

5455 It was sometime in 1917 that the executive officers determined to limit the redemption of Atwood No. 4 wrappers to redemptions accompanied by other coupon wrappers issued prior to 1917, or 1916 with a further limitation of 20%. I do not think we redeemed any No. 4 wrappers in 1916. It is not necessarily customary that wrappers issued one year are offered for redemption the same year.

As to whether it often happens that wrappers issued in 1915, say, are offered in redemption by some one in the
5456 same year, I will say, a wrapper issued the latter part,

say November and December,—what I mean is packed on the soap and shipped out from the factory—there is little chance of its being redeemed that year because the consumer—it may not get off the retailer's shelves until 1918, or 1917, rather. During all of 1917 redemption to some extent was made of the Atwood No. 4 wrappers. I have made no separation in my report as to such redemptions and the coupon wrappers. I separate the year 1918 because in January of that year I got out the wrap-
5456 per, Atwood No. 5. I did not state that no Atwood No. 4 wrappers came in in January or February, 1918. In 1918 we discontinued redeeming them. I do not know when that conclusion was reached by the Executive Committee. It must have been communicated to me in the
(3975) latter part of 1917. I infer that from the fact that I
5457 got this Atwood No. 5 ready in January. In the early months of 1918 we might have redeemed Atwood No. 4s where a customer had a few of them.

As to whether we kept up the 20% rule with respect to the redemption of Atwood No. 4 wrappers, I will say not up to 20%. In 1918 we stopped it. What I mean is, if a customer sent in 100 wrappers and she had two of these No. 4s, we would not decline to fill her order, we would fill her order.

5459 Friday, November 17, 1922. 10:30 A. M.

CHARLES A. ATWOOD, resumed the stand for further cross-examination by Mr. Aldrich:

Referring to the figures shown on Wrigley Exhibit 63, Atwood No. 2, my only explanation of the fact that the percentage of redemptions for 1915 decreased over 5% below the percentages of 1914. When the issues in 1915 were more than 70% over our 1914 issues, is that that reduction was on account of the prosperity of the laboring classes at that time and the increased cost of the premiums. I do not mean that the laboring classes, owing to prosperity, did not save the wrappers. I mean they did not redeem them as promptly.

Wrigley Exhibit 63, Atwood No. 3, was an average
5460 day's receipts, both as to the date of issue, of the cou-
5461 pons and as to the number redeemed. The total number of redemptions on that day was the average redemp-

(3976) tions, and they show the average of the coupons redeemed. The individual packages will vary, that is, as to the age of the coupons in the package.

It is correct to say that this sheet, Atwood No. 3, shows a total redemption on that day of 591 coupons, and of those in batch No. 1, 40 coupons, or 16⅔% of the total included in batch 1 were over 18 years old. My testimony is not that that is true of each of those re-
5462 demptions. It would not be true of each day's redemptions on that one batch. I am talking of the general receipts, daily receipts, getting an average yearly age of
5463 the coupons. I cannot say that on an average of every
5464 591 coupons redeemed, 40 of them are over 18 years old. That is a general average of coupons as far as I have seen the coupons come in from time to time, which is about twice a week, has been for several years since we discontinued the premium business.

On an average there would be 9 of every 591 coupons that were over 16 years old. According to this statement there were 9 of these coupons issued prior to January 1, 1906, out of 591 coupons. As to whether that is according to my testimony the average of the day's redemptions, I will say I cannot say as to the specific quantity. I simply know that these old coupons are coming in regularly.

5465 This Wrigley Exhibit 63, Atwood No. 3, purports to show that there were 34 other coupons in addition to the 9, making in all 43 coupons out of the total shown by this Exhibit of 591 coupons that were over 16 years old.

This Exhibit also shows that there were 90 old coupons out of the total 591 shown on this Exhibit that were over 12 years old. The result is that there were 173 coupons
(3977) out of the total of 591 redeemed on November 3rd that were over 12 years old. I cannot say that that is an average, that out of 591 coupons redeemed 173 of them are over 12 years old. I do not know for what purpose
5466 this statement was produced here. I was asked to bring up a day's receipts and asked to analyze it. It was the first time I ever analyzed our receipts of premiums as to the ages of the coupons.

This Exhibit also shows that out of a total 591 coupons, 278 of them were over 10 years old. I would say that fairly represents the daily redemptions of Procter &

Gamble of their coupons, with the exception of that batch No. 1 which contained some very old coupons.

5467 Referring to the fact that no redemptions are shown by this Exhibit of coupons of less than five years old, I will say it is true that in our daily practice we get no coupons until they are five years old.

We discontinued premiums in 1916. Therefore, the coupon wrappers that are coming in must be at least five or six years old. That is based on the fact of the discontinuance. As to whether prior to our discontinuance they attained any such ripe age, I will say they did. I had no reason for choosing the redemptions of November 3rd as contradistinguished from any other day. They were the receipts at the time I was asked to bring them. I was not asked to bring the redemptions of November

5468 3rd. I was asked to bring redemptions or receipts that we had or could show. There was no specific request to select a day that showed a good many old vintage of eighteen and sixteen years, or twelve years. I still ad-

(3978) here to the idea that it is a fair representation of our daily redemptions, with the exception of batch 1.

Batch 1 is extraordinary as to the relation of the ones in that batch between 1903 and 1906. Batches 2 and 3 contained wrappers over 10 years old. Batches 4 and 5 contained nine of the 10 years old ones. Our coupons

5469 wrapped soap was sold to jobbers and retainers, the latter in turn selling it to the customer. Procter & Gamble sell to retailers.

I have never studied the methods adopted by retailers of having sale days for the distribution of soap. There may have been combination sales of Procter & Gamble's soaps with other kinds of soaps, but I never heard of combination sales of our soaps during the premium time. I have seen bargain sales of Procter & Gamble's soap advertised in the papers at the rate, for example, of 6 cakes for a quarter. I do not recall ever having seen

5470 advertised 24 or 25 cakes for a dollar. I do not know how long and for how many years grocers have been in the habit of having sale days on soap.

It is my understanding that the average retail purchase of soap was one to two bars at a time. That state-

5471 ment is based on information I have had from the sales department. I got that at the time we were in the premium business, and I had it confirmed last week in our district sales manager's office.

5472 I asked Mr. Bolton, who is our office head salesman, if he considered the average sales of soap to be one and two bars, and he said yes. I understand all classes of people buy laundry soap. The principal consumers of laundry soap, as we knew them, or as I knew them, and to
(3979) which we catered, were the middle and laboring classes. When I referred to the average purchase I ment the housewife; persons who do laundry work for families, and also laundresses may buy in larger quantities.

5473 Br. Bolton and myself talked about the average pur-
5474 chase of the consumers. Soap improves with age. I do not know that that is an inducement for people to buy in larger quantities and save the wrappers.

Redirect Examination by Mr. Mayer.

In giving my testimony that in my opinion one to two bars was the average purchase by the consumer I had in mind as consumers all classes of persons that buy our soap from retailers. There is just one other person besides myself now in the employ of Procter & Gamble that handles their coupons that come in for redemption. That condition has existed since sometime in 1920.

In the last two or three years I have examined thousands of coupons that have come in for redemption. I have done that since we discontinued business.

I will state to what extent I have examined them. I
5475 examined many large quantities of panels or coupons received about which the clerk was not sure as to their legality in order to authorize their redemption. She would lay those aside until I looked them over. The type of those panels, the legality of which she questioned, were the non-premium wrappers.

As to how frequently I examined any of the panels or
(3980) coupons returned for cancellation before we discontinued issuing them, I will say I frequently examined coupons as I visited the different premium stores, and
5476 when I visited our mail order department to examine coupons when large quantities were received from one individual.

As to how often I would make an examination of the coupons returned for cancellation before we quit issuing them, I will say at least every month, sometimes more

frequently. We had a premium store across the street from our office, and I was in and out of there a great deal besides visiting the other stores and our mail order department.

My examinations were made before we discontinued issuing coupons sufficient for me to have general knowledge of the general character of coupons that were coming back for redemption, that is, when they had been
5477 issued. I have examined on an average once or twice a week coupons that have been returned for redemption since 1916 or 1917. Since 1916 or 1917 I have personally examined and thumbed the coupons that were laid aside for examination. That would average, I think, once or twice a week for the last six or seven years.

My testimony, to the effect that I regard Wrigley Exhibit 63, Atwood No. 3, a fair type of the coupons as they are coming in daily now, and the average ages thereof, is based on my observation and experience with the handling of the wrappers and coupons. I first found out that somebody wanted a computation made as to the
5478 ages of coupons returned to us for redemption when I came to Chicago last week. I came to Chicago because
(3981) I was told Wrigley wanted me as a witness in the case now on hearing.

In taking these five batches of returned coupons on November 3, 1922, shown on Atwood No. 3, I did not know what they were wanted for. I did not find out what they were wanted for before I came to Chicago, last week. The request which the Wrigley Company made of me with regard to furnishing them with the Procter & Gamble experience as to coupons, as I recall it, was that we
5479 would show issue of coupons and percentage of redemption as far back as we could.

I will state what I did with a view of gathering up or
5482 procuring the requested information. I personally endeavored to locate the books in our files and in the vaults where old records are kept, and not finding the records prior to 1910 readily, I did not make an exhaustive search for them because I did not feel they were necessary. While I did not know what the information was wanted for—for what the information was wanted, I felt that because the premium business prior to 1910 was small compared to the business from that time on and that Gold Soap was not sold by us until 1907 and the other

large brands—Satin Gloss was not sold by us until 1910—that the business, the comparatively small business on Star Soap would not be of any material assistance or worth my while putting on overalls and looking for the books.

As to whether I believe that a more thorough search would enable the finding of the records of the coupons issued by Procter & Gamble from the beginning up to
5483 1910, and also the record of those redeemed during that
(3982) period, I will say that records of the coupons issued can readily be located. I still think that the records of redemption are available, that they simply became lost in the moving from building to building, and from floor to floor. By lost I mean mislaid or misplaced.

We have a record in the general books which shows the number of coupons that were issued from the beginning up to 1910. As to whether I have a record of the sales made from the time when we first began to issue panels or coupons up to 1910 of the soap contained in those wrappers, I will say "issue" and "sales" are
5484 synonymous with us.

I am willing, if the Wrigley Company pays the clerical expense necessary therefor to have a thorough search made to find the records of the panels or coupons issued and redeemed from the beginning up to 1910, and to prepare therefrom a statement showing the annual number of issued and te annual number of redeemed during that period in order that that statement can be presented to the master and used as part of my testimony.

(Mr. Mayer then asked the witness to prepare such a statement when he got home, and to give counsel for the Wrigley Company notice of the result, so that they could continue their redirect examination or further examination of him after he had made that search, and if it is successful, after he had prepared the desired statement of issues and redemptions.)

5485 Mr. Aldrich asked me as to whether the redemptions of 1918 of 13,605,579 include any of the non-coupon wrappers similar to Atwood No. 4. I will tell the master what
(3983) the facts are in that respect. The 1918 figures do not
5486 include any appreciable amount of the No. 4 wrappers or coupons.

I testified in answer to a question of Mr. Aldrich's that if a person in 1918 presented 100 coupons for re-

demption, one of which was a No. 4 coupon, we would accept it. As to how frequently such a condition would arise, I would say the only specific information I can give in that period is if a person sent in over 5 non-coupon wrappers, 5 and over, they would be rejected. For that reason there could not be an appreciable number of non-premium wrappers. Any No. 4 wrappers that were redeemed by Procter & Gamble were counted by
5487 somebody along with the others.

The rule refusing to redeem coupons that contained over 20% of No. 4s was in force and enforced during the year 1917. That rule was in force during the entire year of 1917. If the books which were mislaid are found it would be a simple matter to make a statement of the annual issues and redemptions from the beginning up to
5489 1910, but it will require three or four days to make an exhaustive search for the book or books, realizing that old records when we think we have no use for them in the general office are sent to Ivorydale, where there is a great big warehouse of old stuff, and that has been shifted around and pushed around, and the whole thing has to be gone over in order to say that the books are not available.

I will endeavor to let the Wrigley Company know at the end of next week what the result is.

(3984) *Recross Examination by Mr. Aldrich.*

5490 During the last three years only myself and one other person have been retained to count and care for the redemptions as they come in. There was a period after the discontinuance in 1917 when I had more help. I have a new clerk now. She is not the same clerk that started in 1918. The new clerk has only been on the work about six or eight months. Her name is Wiebe. I think her
5491 initial is E, I am not sure. Her predecessor was Emma Bode. She resides in Cincinnati. Since 1918 there has been only myself and an assistant retained to count and care for the redemptions as they came in. In 1917 we still had a good many clerks.

I did not know what the purpose and the object of At-
5493 wood No. 3 was. They asked me if I could take those panels and show the ages of the coupons. I did not know what it was for. As to whether I suppose that they

wanted to show that our customers valued the coupons as antiquities rather than as premium coupons, I will say I had no supposition on the matter at all. I did not think about that at all. I was not interested in the thing. I just gave them what they wanted.

(3985) November 20, 1922, 10:30 A. M.

5494 JOHN R. HUNTER, called as a witness on behalf of Wm. Wrigley Jr. Co. being first duly sworn, testified on Direct Examination by Mr. Lane:

My name is John R. Hunter. I live at 639 Addison Street, Chicago. I am in the secret service line. I have been engaged in that line of work in the City of Chicago about twenty five years. I did some investigating work for Mr. Isaac H. Mayer in connection with the business
5495 of L. P. Larson Jr. Company. That brought me in contact with a man by the name of Charles G. Buck. That was in July, 1919. At that time Mr. Isaac Mayer called me up and told me that a man named Buck, Charles Buck, had testified that he did some printing for Mr. Larson; that he had printed some labels for Mr. Larson, and Mr. Meyer asked me to look into the matter for him with a view of determining the date that those labels were printed, and as a result I located Mr. Buck and sent for him along the first week of July, 1919. Mr. Buck came to my office as a result of my request. I think that
5496 was around the tenth of July. When Mr. Buck called on me, he came in and said he was Mr. Buck, that he came in in response to a message that had sent for him and wanted to know what I wanted to see him about. I told him I wanted to see him about some labels that he printed for Mr. Larson, that there was a question about the date, and he said, "Well, I just got back from the war and before I went there my books were stored where I lived. Those books will disclose all the facts. I am perfectly willing to go with you and get the books and that will tell what the facts are." I said, "Would you
(3986) mind seeing Mr. Isaac H. Mayer, who is attorney for Mr. Wrigley in this matter? and he says, "Certainly, I have no objection at all," and right there I called up Mr. Isaac H. Mayer over the 'phone and told him Mr. Buck was in my office and that if he had a few minutes, we

would come over to see him. Mr. Mayer said to come over right away—that was in the morning around ten o'clock—and we went over to Mr. Mayer's office, immediately after that telephone conversation. On the way to Mr. Mayer's office we never discussed the matter at
5497 all. When we reached Mr. Mayer's office, we announced our presence to the young lady and the young lady in turn went in and saw Mr. Mayer and she returned and said for us to sit down, that Mr. Mayer would see us in a few minutes and we sat on the settee there to the right as you enter the reception room. While waiting there for Mr. Mayer in the outer office, we had no conversation whatever regarding the matter in question. The mere fact that he had records and would produce the records, why there was no occasion for discussing what his records were. We had a conversation about the library in the outer office while waiting for Mr. Mayer. Mr. Buck commented upon the large library, and I said "Why, this is the left-overs. The library is way down a block" I said. Well, now, probably not a block, half
5498 a block down the hall. "This is stuff they have no room for in the library. After this conversation somebody announced that Mr. Mayer could see us, or Mr. Mayer came out—I think Mr. Mayer came out and I introduced him and we walked back into Mr. Mayer's office, and after we got in there I told Mr. Mayer that Mr. Buck was kind enough to come down and that I had discovered now that Mr. Buck had all his records up at the place where he lived on the north side, that he was
(3987) willing that we should go up there and look at the records and get the facts from him, that he had his records intact. At that time I introduced him to Mr. Mayer. After introducing him to Mr. Mayer and making this statement, there was no special conversation about the matter in question other than Mr. Buck spoke about his being over in Europe—the war—and just got back, and that he was going to go back in the printing business. I
5499 do not believe we were in there over ten minutes. As to what was said during that ten minutes period by Mr. Mayer, Mr. Buck or myself concerning the printing of labels by Mr. Buck for the Larson Company,—the conversation about the labels was cut off by the mere fact of Buck assuring us that he had the facts in the books and that he would produce the books, and we did not dis-

cuss dates and circumstances with him at that time. As to whether there were any statements made by Mr. Mayer or me as to what we wanted in the way of facts, I will say we wanted to establish the date that was set forth that a certain label was printed by Mr. Larson. That label was Spearmint I think. I am not absolutely sure but I think it was Spearmint. There was some conversation about the Wintermint label having been printed by Mr. Larson. I cannot recall the details, but there was no definite questioning by Mr. Mayer or myself regarding Mr. Buck's recollection as to how he fixed the date or what was the exact date. Mr. Buck took the position that he had those
5500 books and they would establish what the facts were. Mr. Buck was perfectly willing to furnish these books and I told him I would take care of his time, any time he lost
(3988) and any car fare, I would take care of that. By the statement "taking care of his time" I meant I would pay him for his time. If he went with us for a day, if his time was worth five dollars, I would pay him that five dollars and whatever car fare he was out; if he was earning ten dollars a day, I would pay him the ten dollars; if it was less than five, I would pay him that amount. There was no promise of any kind as to the payment of anything other than the amounts I have referred to and no talk of any other kind than what I have related. After we left Mr. Mayer's office and before we parted on the street, Mr. Buck said he would be down to my office the next day or the day following and that he would go with me up to a certain place on the north side, the loca-
5501 tion he did not define, and that we would get the books and take them down to Mr. Mayer's office. I don't know whether it was the next day or the day following, it was a few days following that Mr. Buck again appeared and my associate and bookkeeper and secretary of my concern had been in the war and just got back, and he was in the office that morning, I think was there for the first time, and when Buck came in I asked him if he was ready to go up and get the books and he said yes. I called in the young man and I introduced him and he had the young man—he was not over three minutes in the office on that occasion, that's all that was said, I introduced him to the young man. I said, "Mr. Buck is a printer. We have a case in our office that came in here while you were gone which involves some printing of labels,

gum labels, and I want you to go with Mr. Buck to some place where Mr. Buck will lead you to and he has some books in there and take the books down and take them
(3989) over to Mr. Mayer's office. The young man I am re-
5502 ferring to is Leon Pallin. Mr. Pallin and Mr. Buck on that occasion went together. Mr. Pallin reported they went up to the house and found the house locked and Mr. Buck did not seem to have any keys to get in and that there was evidently nobody in the house to let them in and that they came back and that Buck was going to come in the next day and go with him again and at that time he would have a key to get in. The next thing that happened was that Buck again appeared, I don't know whether it was the next day or the day following, and Mr. Pallin went with him again. When Mr. Pallin came back he told me he went up with Mr. Buck to the address they were at the day before and that Mr. Buck on this occasion had a key. They opened the door and went in and there did not seem to be anybody in the house. Mr. Buck told Mr. Pallin to sit in the parlor and that
5503 he would go up to the attic and get the books. He went up into the attic and was gone some time and came down and said he could not get in or that there was something wrong, that he could not get access to the books, the key would not fit the lock or something of that kind. Well, we did not get any books. That was the last time I saw Mr. Buck, the last time I talked to him, the second time he was in with a view of going out to get the records. I was in Mr. Mayer's office during all the conversation between Mr. Mayer and Mr. Buck and myself. I was in Mr. Mayer's office all of the time that Mr. Buck was with Mr. Mayer. I heard everything that was said on that occasion. I was never at Mr. Mayer's office with Mr. Buck subsequent to that one occasion. That is the only time I was there with Mr. Buck.

(3990) "Q. Mr. Charles G. Buck has testified in this case that some intimation was made that a printer had done some investigating work and had been a witness for
5504 Wrigley and that during the conversation referred to in Mr. Mayer's office some statement had been made by you or Mr. Mayer to the effect that after this work had been done by the printer the Wrigley Company secured him a position drawing ten thousand dollars a year, steady

work at that time. What have you to say regarding any such conversation, Mr. Hunter?

A. There never was any such statement made or anything that would lead or could be construed as anything of the kind.

Q. The same Mr. Buck in referring to that conversation which he says took place in Mr. Mayer's office in 1919, after first stating that Mr. Mayer or you had advised him that nothing was wanted 'but the truth and the whole truth,' said that it was repeatedly suggested that no printing was done by him for Larson until 1916. What have you to say about any such conversation?

A. There was no such conversation or no such inquiry because he assured us that he had the facts and he would lay them before us.

Q. Mr. Buck has testified to the effect that Mr. Mayer read testimony 'that took place in the Larson gum case.' What have you to say concerning such occurrence?

A. Mr. Mayer did not read any testimony to him
5505 while we were in his office.

Q. Did he at any time so far as you know?

A. No.

Q. Was the only occasion where you and Mr. Buck and Mr. Mayer met the one occasion that you refer to in Mr. Mayer's office in July?

(3991) A. That was the only occasion.

Q. Mr. Buck testified in this case in answer to a question by Mr. Aldrich as to what was said about the Larson Company or himself on that occasion in Mr. Mayer s office that it was there stated that the Larson Company was "a very small proposition and did not amount to anything anyway and they said Mr. Aldrich was an irresponsible lawyer, a bankrupt, and not of any standing whatever.' What have you to say as to any such conversation taking place at that time and place?

A. There was no such conversation took place at any time. I did not know Mr. Aldrich. I always construed this Mr. Aldrich as a different Aldrich from the man I knew. I knew a Mr. Aldrich that I thought a whole lot of and I thought he was the Aldrich that was always in this case and I regretted that very much because I did not want to take sides against a lawyer that I knew or that I ever did any work for, and I later heard that that Mr. Aldrich died and it was then I dis-

covered it was a different Aldrich from the Aldrich I knew."

(3992) There was no conversation took place at that con-
5506 ference concerning Mr. Aldrich's standing, or the size of the Larson Company. Referring to Mr. Buck's statement in this record that there was an intimation made by me or Mr. Mayer that he could secure a job similar to the one that he says it was stated some one else had been given for testifying, I will say that there was no statement of that kind made, or no intimation of that kind or character which could be drawn from any statement occurring at any time with Mr. Buck. Outside of the conversation I have stated with regard to Mr. Buck being paid for the time which he actually spent, there was no conversation concerning his being given a job of any kind, nor was any statement concerning his being given a job of any kind made at all. There was no statement made on that occasion which attempted to fix any date when Mr. Larson did printing for Mr. Buck prior to 1916. There was no effort made to fix the date. It all centered on the fact that he was going to get the
5507 records for it and lay them in our lap, so to speak. As
(3993) to what question was asked or intimation given to Mr. Buck as to whether he was open or available for a job, I will say that there was no such conversation at all at any time.

Cross-Examination by Mr. Aldrich.

As to what occasioned Mr. Buck's statement that he was going into the printing business now that he was out of the service, I will say he just made an offhand remark that he was going back into the printing business; that that was his line and he did not know anything else and he was going back into the printing
5508 business. In answer to that statement on his part, nothing was said by me, or Mr. Mayer. It was just a matter of asking a man what he was going to do. "I am going into my old line. I used to print and that's all I know and I am going back into it." I made an attempt to locate these books prior to Mr. Buck's return to this country. I went over to a printing place, 102 North Franklin Street, I think. That's a place where Mr. Buck had his office before going into the service. I went over there and questioned somebody whose name

I forget, somebody who succeeded to Mr. Buck when
5509 Mr. Buck went out of the office. Thomas Morrison was with me. He was a deputy in the sheriff's office. As I was on my way over there I met Mr. Morrison and I asked him if he knew anybody in the printing line, that I wanted to go in and see somebody up in the building on Franklin Street and they did not know me, and I asked him if he would not go up with me and vouch for me that I was O. K., that I wanted some records that belonged to a man that was over in the war and that they probably would not give them to me unless there was some directions, and Mr. Morrison said he would be very glad to go with me. I met him within
(3994) half a block of where I was going. That meeting with Mr. Morrison was purely accidental. Mr. Morrison did not vouch for me by stating that he was a deputy sheriff and that we came there to get those books. There was no such statement made. Mr. Morrison said "This is Mr. Hunter. I do not know whether you know me or not," speaking to the man with reference to himself, "but I have been connected with the sheriff's office. If you want to call up and see who I am, call up the sheriff's office. I am vouching for Mr. Hunter. He is
5510 O. K. He is looking for some records. If you can help him, I would appreciate it." And that was all that was said by Morrison. The other man said "I would be glad to show you anything I have", and they picked up some books and looked at them. They were all in heaps there, and we waded through them for a while. Then he said "they might be in there and they might have been taken away by Mr. Buck, Buck did take some books away before he left, and it is possible he took some of his own books that showed who his clients were and where he did work." And he said, "If there was anything that will show, go ahead and look." I looked a while, and I had some matters I thought more pressing than that and went back. As to whether I saw any of Buck's books at that time, I will say there was some memorandum, but there was nothing there on Mr. Larson, nothing there bearing on anything of—well, his order books, or anything of that kind. We did find some set-up for some printing that he had done. I forget who the people were. There was some evidence that Buck was in that office at one time. A printer by the name of Kittredge was not mentioned or described in the conversations with Mr. Buck.

(3995) L. C. PALLIN, called as a witness on behalf of Wm.
5511 Wrigley Jr. Company, being first duly sworn, testified on Direct Examination by Mr. Lane as follows:

My name is L. C. Pallin. I am twenty-nine years old. I live at 1240 North Dearborn Avenue, Chicago. I am Secretary of Hunter's Secret Service. I have been connected with the Hunter's Secret Service for about sixteen years. It is located in Chicago. I was in the infantry branch of the service during the war. I was in the service about a year from July, 1918 until June, 1919. Previous to the time I went into the service, I
5512 was connected with the Hunter's Secret Service about 11 years. I have been connected with it since I returned from the service. I was discharged in June, 1919 from the service. After that I went back to work with the Hunter's Secret Service on July 7, 1919. The first few days after July 7, 1919 I did not do much of anything in the Hunter's Secret Service, just hung around the office, so to speak, to get next to what was going on.
5513 A few days after I got back I was introduced to Mr. Buck, Charles Buck I believe it was, by Mr. Hunter and told to accompany him up on the north side somewhere where he had some records, that I was to help him carry those records back to our office. Nothing else was said at that time by Mr. Hunter or Mr. Buck. I was introduced to Mr. Buck at Mr. Hunter's office on July 10, 1919. After being introduced, Mr. Buck and myself left the office, walked to Clark and Lake Street and we took an Evanston express train, as I remember it, and rode to either Edgewater or North Edgewater Station, I forget which. We then walked east a block or two and north about half a block to the house where these records were supposed to be. On that afternoon
(3996) Buck found the house locked and he could not get in and we came back to the office together and he ar-
5514 ranged to go out with me the following afternoon. We could not get into the house on that first occasion. When we came back to the office, Mr. Buck did not again meet Mr. Hunter. Mr. Hunter is the man who has just testified this morning. On our trips to and from the Edgewater residence nothing was said by me or Mr. Buck concerning the books that we were going after. We

talked about army life. He had been in France and I also was, and that was the topic of our conversation. We simply compared army notes. I did not know what the purpose was in securing those books at that time.
5515 On the following morning, that is July 11th, Charles G. Buck came in again and together we went up to the same house. On this occasion he had a key and we went in and he left me sitting in the parlor, saying that he would go upstairs first to find out whether the room in which these books were, was open. He was gone about half an hour and he came down and said that the door was locked and he could not get in. Following this we both left the house and came downtown. No further explanation was given to me by Mr. Buck as to the books on that or any other occasion. I just understood that he had some books or records there that I was to help him carry down to the office. We did not discuss any case that pertained to them. Up to the time that I last saw Mr. Buck, no information was given to me at any time as to the purpose for which those books
5516 were to be secured. There was furniture in that house that day, but there was nobody in the house; it appeared that somebody lived there. I staid at the residence where Mr. Buck had me sitting in the parlor while he was upstairs, for about half an hour. He did not
(3997) offer any explanation why he was so long or why he could not find the books he sought; nothing other than when he came down he said, "The room upstairs where these books are in is locked and I have no key and I cannot get in." The last time I saw Mr. Buck was July 11, 1919. Mr. Buck did not tell me whether he lived at that house or not. He did not say. I have not seen or heard from Mr. Buck since that time. I did not at any time or any place make any suggestion to Mr.
5517 Buck as to his being employed by anyone. No such conversation of that character took place anywhere. There was no other conversation than I have stated on this record concerning these books, between Mr. Buck and myself. There was no cross-examination, it being waived by Mr. Aldrich.

5518 ISAAC H. MAYER, called as a witness on behalf of Wm. Wrigley Jr. Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Lane.

I am counsel in this case and have been since shortly subsequent to the starting of these accounting proceedings. I was born in Chicago, have lived here all my life, was admitted to the bar of the state of Illinois in 1886 after graduating from Yale in 1884. I am an officer of the court in which I am now testifying and I am admitted to practice in the Supreme Court of the United States and other federal jurisdictions and have been for many years; I am taking the witness stand solely because of the testimony of Charles G. Buck and the intimations contained therein. The Buck I refer to is the Buck I cross examined as one of the counsel in the case
5519 on hearing.

"Q. Mr. Buck has referred to certain conversations which took place at your office in the presence of Mr. Hunter, who has just testified, sometime in the spring of 1919, although he cannot definitely fix the date. Will you please state on this record what occurred in your office at that time and place?

(3998) "Mr. John R. Hunter, the gentleman who testified here this morning, and Charles G. Buck came into my office. I had never met the latter before. Mr. Hunter introduced him to me, saying that Mr. Buck was the gentleman concerning whom Mr. Hunter had just telephoned me and that Mr. Buck had told Mr. Hunter that he had books or records from which he could tell when he did his printing for the L. P. Larson Jr. Company, or Mr. Larson. I told Mr. Buck that that was precisely what we were looking for, that we were trying to find the dates whe he did that printing. I asked him whether he would be willing to procure those books for us and he said he would, and I asked him to do so and to arrange with Mr. Hunter when they could be procured, that we were desirous of knowing the exact dates when he worked for Larson, or the L. P. Larson Company and particularly when he first began to print the Wintermint labels for Larson, or the Larson Company.
5520 There was nothing said by either Mr. Hunter or myself

to Mr. Buck with regard to procuring a position for him. Buck was not asked in my hearing by anybody whether he was open to a position, or looking for a position. He was not told by me, nor by any one in my hearing, that some one had done some investigating for the Wrigley people and had done some testifying for them and was then in a position which they had procured for him which was paying ten thousand dollars a year. Nothing to that purport was said, intimated, or alluded to by any one. Mr. Buck was not asked whether he could fix a date as late as 1916 when he first began to print for Larson, or his company. There was no suggestion as to what date we were seeking to prove, or wanted him to testify or wanted him to find support for. There was nothing said to him to the effect that he
(3999) might get a position, or that a position might await him, or that something would be done for him if he would fix a date for the earliest printing of labels for Larson as late as 1916. There was nothing said or intimated to him that he would have any remuneration if he furnished any particular date, or swore to any particular date. There was no offer, or attempt of offer, or intimation that he should commit perjury, or that he would be bribed, or that he would receive any reward. The only reference to compensation was that if
5521 he would be willing to look for his books, his actual time and expenses would be paid him.

I want to say as emphatically as I can that every word of Mr. Buck's testimony to the effect, or intimating, that there was any suggestion made to him by me, or in my presence, or in my hearing, that anything improper was wanted or desired of him, or that we desired that he should testify falsely, or procure false information, or that anybody had been rewarded for testifying for the Wrigley people, or had received a position, is absolutely, unqualifiedly false in its entirety, and is a pure fabrication. I never had but one interview with Mr. Buck. That is the one to which I have referred in my testimony, and Mr. Hunter was present during that entire conversation which I had with Buck. I heard everything that Mr. Hunter said to Mr. Buck while in my room. Of course, I do not know what passed between Mr. Buck and Mr. Hunter not in my presence, that is, from personal knowledge.

(4000) "Q. Mr. Buck has testified that there were some
5521 statements of a personal nature to the effect that you had said that your son was in the aviation. What have you to say as to that?"

5522 I never made any statement to Mr. Buck to the effect that I had a son in the aviation. I have three sons. The youngest entered the service at about nineteen, was in the infantry; the oldest was married, was in the artillery; the middle one, who entered a few days after the war, was in the signal corps.

"Q. After the war started do you mean?

A. A few days after the war started, was in the sig-
(4001) nal corps," and was wounded at the front in battle." None of them were in the aviation. There was no reference to Mr. Aldrich in that discussion. There was nothing said with regard to the Larson Company being a small, or irresponsible concern, and I wish to definitely deny that I made any reference to Mr. Aldrich's character, or that he was a bankrupt, or that he was irresponsible, at that interview, or that I made any reference reflecting upon the size or the magnitude of
5523 the business of the Larson Company. Mr. Hunter turned in a subsequent report to me concerning this episode with Mr. Buck.

(Mr. Lane asked what that report was, Mr. Aldrich objected. The objection was overruled.)

The first report was over the telephone from Mr. Hunter that Mr. Buck was then in Mr. Hunter's office and had told Mr. Hunter that he had records showing when he did his printing for the Larson people, and Mr. Hunter asked me whether he could bring Mr. Buck to my office and I told him he could do so then.

Since Mr. Buck was at my office with Mr. Hunter I received word from Mr. Hunter that Mr. Buck has gone to some house with the apparent view of finding the records, but that Mr. Hunter was unable to procure the records from Mr. Buck. That ended the episode so far as I was concerned until Mr. Buck testified in this case.
5524 Mr. Buck, on that occasion in my office showed a perfect and entire willingness to procure the information concerning those dates for me. He volunteered the statement that he had the records that he thought would show exactly when he printed and did work for
(4002) the Larson people and that he would be perfectly willing to go and get them and let us see them. I do

not believe that Mr. Buck was in my office with Mr. Hunter more than a few minutes. I know I read no testimony to him. I know that there was no discussion about the books that lasted over a minute, and the introduction and formal matter I do not think took over a minute, possibly two or more. I want to voluntarily add that this testimony has been given reluctantly from the point of view that it has been deemed best that a lawyer in the case should take the witness stand, but that I have felt and Mr. Lane has felt that, in view of the aspersions cast, it would be proper for me to testify.

Mr. Aldrich waived cross-examination.

(4003) Monday, November 20, 1922, 2:00 P. M.

5525 NELSON L. BUCK, called as a witness on behalf of Wm. Wrigley, Jr. Company, having been heretofore sworn, testified on direct examination by Mr. Mayer:

I am the Nelson L. Buck who has been a witness in the matter now on hearing. I was connected with the Zeno Manufacturing Company from 1904 to the end of 1910. My first position with them was the first position I ever had after I left college.

5526 I first went through the entire Zeno plant in order to thoroughly learn the various routine jobs of manufacturing and then after that I was assistant purchasing agent, later promoted to purchasing agent, and then at the end of 1910—by 1910 I was assistant superintendent. During that period, I would like to add, I also made sort of a specialty of cost accounting pertaining to the production end of the business.

I recall that the Wm. Wrigley Jr. Company, a party to the suit on hearing, was organized about January 1, 1911. That company is a West Virginia corporation. When the West Virginia Wrigley Company was organized it succeeded to the business of the Zeno Manufacturing Company and Wm. Wrigley Jr. & Company. As I understand it, that Wm. Wrigley Jr. & Company, to which I have referred was an Illinois corporation.

For the Zeno Manufacturing Company, as I understand
5527 it, the West Virginia company paid two and one-half million dollars of its common stock, seven hundred fifty thousand dollars of its preferred stock plus notes; to

Wrigley & Company it paid five millions of its common
(4004) stock and seven hundred fifty thousand of its preferred stock. The preferred stock and notes were given
5528 to the Zeno Company for the so-called tangible property of that company. The preferred stock of the West Virginia Company given to the Illinois Wrigley Company was given to the Illinois Company for its so-called tangible property. The principal things the West Virginia Wrigley Company received from the Zeno Company for the two and one-half million dollars common stock given the Zeno Company were the valuable trademarks, trade names, concessions, patents and good will.
5529 By "patents" I mean patents and contracts covering contracts.

I understand the Illinois Wrigley Company gave the West Virginia Wrigley Company for the five million dollars common stock of the latter company, good will, a going business, trade-marks, trade names, reputation which it had built up with the trade· all of which were very valuable.

The Zeno Manufacturing Company, during my connection with it during 1904 and up to the time it sold out to the West Virginia Wrigley Company was in the chewing gum business, manufacturing and selling Zeno brands as well as private brands manufactured for the trade.

The Zeno Company was being operated profitably from 1904 up until the time of the sale to the West Virginia
5530 Company. I was a stockholder in that company during that time. The company was paying a dividend during that time. I do not know the amount, but they were substantial every year, never less than 6%.

I am unable to say how many customers the Zeno Manufacturing Company had. It was a large number,
(4005) but I was not connected with that end of the business, so I would not be able to state. I do not know specifically, but I would say the Zeno Manufacturing Company was manufacturing and dealing in from 10 to 12 so-called Zeno brands from 1904 until itsold out to the West Virginia company.

5531 The Zeno Manufacturing Company, from 1904 to the organization of the West Virginia company, had its own selling organization for disposing of its output, and to also dispose of its private brand output to concerns who sold their gums under their own private names. The

Zeno Manufacturing Company had continuous business dealings with the Illinois Wrigley Company between 1904 and 1910. Tose business dealings were extensive. Those business dealings were the manufacturing of the Wrigley brands. The business with the Wrigley Company amounted to a large percentage of the total business of the Zeno Company. The Illinois Wrigley Company did not manufacture any gum of its own from 1904 to the time of the organization of the West Virginia company. The Zeno Manufacturing Company manufactured the gum used by the Illinois Wrigley Company from 1904 to 1911.

The organization of the West Virginia company in effect brought about a merger of the Zeno Manufacturing Company and the Illinois Wrigley Company. I was associated continuously with the Zeno Manufacturing Company up to the time the West Virginia Company took over its business. I became associated with the West Virginia company immediately upon its organization.

My first title was assistant superintendent. In about 1914 I was promoted to general factory manager. I held that position until about 1920 when I added the title of
(4006) vice-president. I was in fact the vice-president in
5533 charge of product. I am a vice-president now. I have been a stockholder of the West Virginia Wrigley Company from the time of its incorporation up to the present time. During all the time I was with the Zeno Company
5534 and during all of the time I have been with the Wrigley Company I devoted my entire time to the production end of the business and therefore I was in very close touch with all the manufacturing methods and with the whole routine of production end of the company. It was a part of my duty to product gum in as efficient a manner as possible, and it was always my ambition to product it by means of automatic machinery to a more efficient degree than in any other plant in the United States or abroad. We have always felt that we could handle our product with less labor than any one else and it has been, in my opinion, generally recognized by the chewing gum trade in general that we have succeeded along this line.

5535 It was part of my duty to keep up to date as to the different types of machinery and equipment used and usable in the manufacture of chewing gum and I have always been well informed on the methods of chewing

gum manufactured used by the trade as far as my sources of information would permit.

(Mr. Mayer then asked the witness as to what extent he had paid attention and kept track of 1904 on to the organization of the West Virginia company, and since, as to the cost of labor needed to manufacture gum and the expense of manufacturing gum. Mr. Aldrich objected on the ground that the evidence was immaterial and irrelevant to any issue in the case. The objection was overruled.)

(4007) The witness continued:

5536 Since about 1905 I have very complete labor records concerning the manufacture of chewing gum in our plants.

I am in a position to show to the master what the cost of labor was which entered into the manufacturing of chewing gum from time to time during the period in question, and I am in a position to do that in connection

5537 with the different types of machines used by the Zeno Manufacturing Company and also by the West Virginia Wrigley Company.

I have made an investigation to enable me to show what, if any, value there was to the patents and patent rights which were owned by the Zeno Manufacturing Company and included in the property which it sold to the West Virginia company about January 1, 1911.

(Mr. Mayer then asked the witness to state what investigation he made on the subject, and the result of it; and that if he had prepared any tables in that connection to produce and explain them.

Mr. Aldrich objected on the ground that before the evidence was admissible it would have to be shown that the patents were worth or cost one million five hundred thousand dollars; that if the evidence went to the saving of labor it was not competent; the depreciation on patents could not be shown unless it was shown that the patents were necessary to the manufacture of the gum; that mere imroved methods of an infringer were not subjects

(4008) of credit under the authorities; that to try to put a value on the patents or to enter into the labor situation from 1904 to 1914 was to embark on an inquiry that would have practically no end.)

5537- (A discussion as to the competency of the evidence

5543 took place, and the master said he would defer the hearing on the objection until the following morning.)